

INFORMATION PACKET

**Public Notice of Proposed Disposition by Public Auction for
82,493 Square Foot (1.89 Acre)
Commercial Property (BMX-3)
Located at 820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu
TMK: (1)2-7-08:18 & 20**

Requesting Agency

**State of Hawaii
Department of Hawaiian Home Lands**

91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

December 5, 2008

**INFORMATION PACKET
FOR BUSINESS MIXED-USE DEVELOPMENT
820 ISENBERG STREET, McCULLY/MOILIILI, ISLAND OF OAHU
INFORMATION PACKET**

LISTING OF ITEMS CONTAINED IN INFORMATION PACKET:

- I. Introduction, Objectives and General Information
- II. Legal Notice – Proposed Disposition of Hawaiian Home Lands by Public Auction of a General Lease for Business Mixed-Use Development
- III. Applicant Qualification Criteria
- IV. Application and Qualification Form
- V. Public Auction Guidelines
- VI. Conduct of Disposition
- VII. General Property Information
- VIII. Exhibit 1 – Legal Description of the Property, including copy of survey map.
- IX. Exhibit 2 – Tax Map
- X. Proforma of Typical DHHL General Lease Document

LIST OF ITEMS AVAILABLE FOR REVIEW IN DHHL OFFICE:

- A. Appraisal Report – (Effective date-December 5, 2008)
- B. Phase I Environmental Site Assessment (Hazardous Materials) – dated April 17, 2001.
- C. Final Environmental Assessment (No Significant Impacts) – dated September 2001

NOTE: While the data in the Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and professional sources, it is not guaranteed. DHHL bears no responsibility for Applicant's actual reliance on the data provided. Applicant should make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant's proposal.

I. INTRODUCTION, OBJECTIVES AND GENERAL INFORMATION

For Business Mixed-Use Development of 820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

Introduction:

The Department of Hawaiian Home Lands (DHHL) is soliciting proposals from persons or entities (applicants) interested in a ground lease for land situated at 820 Isenberg Street, in the McCully/Moiliili district of Honolulu, Hawaii. The term of the lease shall be a maximum of sixty-five (65) years.

Applicants shall be required to submit details regarding their planned use and development of the site, meet certain criteria and submit rent proposals as further described throughout the Information Packet that follows.

The applicant that best meets DHHL objectives and criteria, and who submits the highest rent proposal, in the form of a “sealed rent proposal” which meets or exceeds the minimum upset rent set by independent appraisal for the first year of the lease, shall have the opportunity to negotiate a ground lease for the subject property.

Objectives:

DHHL wishes to lease the subject parcel for development at its highest and best use, which has been determined to be “business mixed-use” under the BMX-3 zoning. The planned development must also be compatible with the aesthetic character of the surrounding neighborhood and not create significant negative impacts on the community. While maximizing revenues is important for furthering DHHL’s mission of providing residential homesteads for native Hawaiians, it is also important that the development of Hawaiian home lands provide socio-economic advancement opportunities for DHHL beneficiaries and consider traditional Hawaiian cultural values, whenever possible.

General Information:

- This Information Packet is intended to help guide an applicant through the process for presenting an acceptable proposal to lease the subject property. Once an acceptable proposal has been submitted, DHHL will evaluate the information submitted and determine if, in its sole discretion, the proposing applicant is “eligible” and “qualified” for further consideration as a potential lessee and project developer.
- The eligible/qualified applicant who proposes the highest rent proposal that exceeds the minimum upset rent for the first year of the lease shall then be selected to negotiate a lease for the subject property.

- Once the highest bidder (Successful Bidder) has been selected, negotiations of all the terms and conditions of the lease will commence. Such negotiations may include all contents of the Successful Bidder's proposal, as well as, all revenue related issues such as, but not limited to, provisions for step increases, sublease rent participation and percentage rent, provided that such negotiation does not result in terms and conditions being less than that in the Successful Bidder's proposal.
- Prior to the execution of the lease and commencement of any demolition or construction on the site, the Successful Bidder shall comply with Chapter 343 of the Hawaii Revised Statutes, as amended, which requires that an assessment be made to determine the impacts the proposed development may have on the surrounding community and environment. Such compliance shall be considered completed upon the issuance of a Finding of No Significant Impact (FONSI) or final approval and acceptance of an Environmental Impact Statement (EIS), which ever is applicable. A previous environmental assessment (EA) that resulted in the Hawaiian Homes Commission accepting a FONSI will be available for review, however, while much of this information may be useful, the Successful Bidder will need to reprocess or update the EA to bring it current and applicable to the development plan proposed by the Successful Bidder.
- In compiling data for the previously completed EA mentioned above, it was discovered that City and County of Honolulu (City) sewer system servicing the subject property is operating at capacity. While the City has informally indicated that it can accommodate wastewater flows similar to those generated by the former bowling center operated on the site, it has no available capacity in the existing system for additional flows. **This constraint has been considered in appraising the value of the property and is reflected in the minimum upset rent.** Interested applicants should consider this constraint in their conceptual development plan prior to submitting a proposal. A written statement from the interested applicant indicating the City can accommodate the applicant's proposed project will be required as mentioned in Section III (entitled *Applicant Qualification Criteria*), item B.3.d)., of this Information Packet.
- Telecommunications for the site shall be provided by Sandwich Isles Communications, Inc. (SIC).

II.

LEGAL NOTICE

PROPOSED DISPOSITION OF HAWAIIAN HOME LANDS BY PUBLIC AUCTION OF A GENERAL LEASE FOR BUSINESS MIXED-USE DEVELOPMENT

Property Address: 820 Isenberg Street, Honolulu, Hawaii

The Department of Hawaiian Home Lands (DHHL) intends to dispose of lands by public auction. As authorized by §204(a)(2), Hawaiian Homes Commission Act, 1920, as amended, individuals or corporations interested in leasing the property herein described shall have 42 days from the date this "NOTICE OF PROPOSED DISPOSITION" is first published, that date being December 5, 2008, in which to submit completed applications for DHHL consideration.

All completed applications received by **4:00 p.m. on Friday, January 16, 2009**, shall be reviewed and only those applicants that meet DHHL's initial objectives and eligibility criteria shall be notified in writing as being "eligible" for further consideration of their proposals. Eligible applicants shall then be required to submit detailed development plan information and a sealed rent proposal to DHHL by no later than **4:00 p.m. on Thursday, April 16, 2009**. After DHHL reviews the detailed development plan information, those meeting DHHL's additional objectives and qualification criteria shall be deemed "qualified" and invited to attend the opening of all qualifying sealed rent proposals **to be conducted at DHHL's Kapolei (Oahu) Office on Friday, May 1, 2009, at 10:00 a.m.**

Information Packets containing an application form, requirements for completing an acceptable application, and other property information are available for prospective applicants during regular office hours at DHHL's Kapolei Office located at 91-5420 Kapolei Parkway, Kapolei, HI 96707, or at the district offices located on the neighbor islands.

Land to be disposed: The property to be disposed, identified by Tax Map Key Nos. (1)2-7-08:18 and 20, contains approximately 82,493 square feet (1.89 acres) of land, and is located at 820 Isenberg Street, in the McCully-Moiliili district of Honolulu.

Purpose/Use: The property is being offered for business mixed-use development. Improvements and uses shall conform to those allowed in a BMX-3 zoning district and all applicable permit requirements consistent therewith.

Term: The maximum term of the lease shall be 65 years.

Rent: The minimum upset rent for the first year of the lease is **\$682,500.00**

Rent for second year and up to a maximum of the twenty-fifth year shall be set during lease negotiations, provided that no negotiated rent shall be less than that of the preceding year. Rent negotiations shall include, but are not limited to, provisions for step increases, sublease rent participation and percentage rent.

Telecommunication Service: Sandwich Isles Communications, Inc. (SIC) will provide telephone and broadband services to the project at a time when such services are needed.

Chapter 343, Environmental Assessment: The successful bidder shall be required to complete compliance with Chapter 343 of the Hawaii Revised Statutes, as amended, prior to the final execution of the lease and the start of any construction activity on the site. Such compliance shall assess the impacts that the proposed development will have on the surrounding environment, such as traffic, parking, noise, etc.


Other Information: Reports, such as a market value appraisal, a Phase I site assessment, and an environmental assessment will be available for review in DHHL's offices during normal office hours, however, these reports cannot be removed from the office and will not be reproduce as handouts to prospective applicants.

The Department of Hawaiian Home Lands reserves the right to cancel or modify this disposition of its lands at its sole discretion.

Please call (808) 620-9456 (Kapolei) for the locations of neighbor island district offices and/or to make an appointment to review reports (referred to in *Other Information* above). For additional information, questions and/or to schedule a site inspection, you may contact Noel Akamu at Department of Hawaiian Home Lands, Property Development Manager, (808) 620-9453 on Oahu.

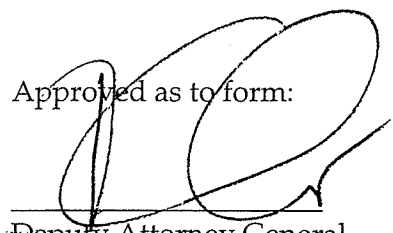
Date: Honolulu, Hawaii December 1, 2008

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By 
Micah A. Kane, Chairman
Hawaiian Homes Commission

Honolulu Star Bulletin
(Local Newspaper)
Date: December 5, 2008

Approved as to form:


Deputy Attorney General
State of Hawaii

III. APPLICANT QUALIFICATION CRITERIA

**For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu**

The Department of Hawaiian Home Lands (DHHL) has established the qualification criteria described below to 1) guide all interested persons or entities through the application process for presenting an acceptable proposal; 2) identify willing and capable applicants who are deemed “eligible” to bid for a general lease of the property at 820 Isenberg Street, Honolulu, Oahu; 3) determine those eligible bidders who, at the time of the public auction, are “qualified” to bid; and 4) select the “Successful Bidder” who makes the highest and best offer to rent the subject property from amongst all qualified bidders.

Prior to the Public Auction, a two step process shall be used to determine an applicant’s eligibility and qualification to enter into a general lease for the property.

A. COMPLETED APPLICATIONS (Step One – Eligibility Criteria)

All persons or entities interested in negotiating and obtaining a lease for the subject property must submit a “completed application” by no later than **4:00 p.m., Friday, January 16, 2009**. A completed application shall include the following:

1. A completed “Application and Qualification Form” or other printed material that provides the same information as that requested in the “Application and Qualification Form” included in this Information Packet (Section IV);
2. A conceptual development plan with enough detail to describe the type, size, and use of the improvements envisioned on the site;
3. Information describing applicant’s experience and capacity for completing the development as envisioned together with supporting documents;
4. Information showing a preliminary or estimated development budget, planned funding sources for applicant’s proposed development, and the financial capacity of each principal member and/or entity of the applicant’s development team together with supporting documents; and
5. Any other information that supports the success of applicant’s conceptual development plan.

DHHL is the sole entity that will review and evaluate the information provided above to determine if the applicant’s conceptual development plan meets DHHL’s objectives and eligibility criteria. By January 23, 2009, DHHL will send out written notices to all persons or entities that have submitted completed applications on or before the deadline. Those who have met DHHL’s objectives and eligibility criteria shall be informed that they are “eligible” to bid. Those not meeting DHHL’s objectives and eligibility criteria shall be informed that they are not eligible to bid.

B. BID QUALIFICATION (Step Two – Qualification Criteria)

Those persons who have submitted completed applications and have received DHHL's written confirmation declaring them eligible to bid (Eligible Bidders) shall have until **4:00 p.m., Thursday, April 16, 2009**, to submit the following:

1. A current Certificate of Good Standing (business entities only) issued by the State Department of Commerce and Consumer Affairs;
2. A current Tax Clearance Application stamped (not more than 60-days old) by both the IRS (federal) and State Departments of Taxation indicating that the applicant is not delinquent on taxes;
3. A detailed development concept which shall include:
 - a) A narrative of the Eligible Bidder's proposed development plan, including additional phases, if any, describing the intended uses, or purposes for the development;
 - b) A site development plan showing where improvements are planned, the square footage of each structure, maximum floor area, parking requirements, landscaped areas, elevations, and renderings;
 - c) An estimated construction schedule with a timeline for all major tasks to be completed, including, but not limited to, HRS Chapter 343 compliance, demolition or renovation of the existing structure, construction of offsite infrastructure (if required), etc.;
 - d) A written statement indicating that the Eligible Bidder has checked with the appropriate department of the City and County of Honolulu (City) and determined that the City can accommodate projected wastewater flows from the Eligible Bidder's proposed conceptual development plan. *
 - e) Other details, renderings, maps, surveys, feasibility studies or photographs that may help convey a clearer understanding of the proposed development.
4. The Eligible Bidder must demonstrate the financial capacity to complete the proposed project as envisioned. In addition to information provided in the completed application, the Eligible Bidder shall submit the following:

* As mentioned in the Introduction to this Information Packet, there are wastewater constraints that could affect the Applicant's conceptual development plan for the site. The previously completed Environmental Assessment dated September 2001 provides information obtained at that time regarding this constraint. If an applicant does not adequately address this issue in applicant's "step two" submittal, the applicant's proposal may be disqualified.

- a) A refined construction budget/estimate including contractors' or sub-contractors' cost estimates, if any;
- b) Current financial statements or tax returns, financing commitments from lending institutions, lines of credit and any documents identifying other financial resources which the Eligible Bidder is relying upon to complete the proposed project as initially budgeted;
- c) An "earnest money deposit"[†] in the form of a certified or cashier's check made payable to the Department of Hawaiian Home Lands in the amount of \$ 170.625.00. DHHL shall hold the earnest money deposit uncashed until the Successful Bidder has been determined. Earnest money deposits submitted by unsuccessful bidders shall be returned; and
- d) A rent proposal sealed in a separate envelope (sealed rent proposal) stating the annual rent that the Eligible Bidder intends to pay for the first year of the lease. The rent proposed cannot be less than the minimum upset rent as stated in the copy of the legal notice included with the Information Packet.

DHHL is the sole entity that will evaluate the information received from Eligible Bidders. The evaluation will be based on the Eligible Bidder's meeting DHHL's objectives and criteria. DHHL reserves the right to disqualify any proposal that lacks sufficient information to clearly define an Eligible Bidder's development concept. Information submitted after the deadlines established herein will not be accepted unless the deadline is extended at DHHL's sole discretion. If not previously disqualified, only those proposals that contain a bid deposit and sealed rent proposal shall qualify for bid opening scheduled for **10:00 a.m., Friday, May 1, 2009**.

[†] The required **Earnest Money Deposit** is an amount, equal to 25% of the minimum upset rent for the first year, that gives some assurance that the qualified prospective bidders are dealing in good faith. All earnest money deposit checks shall remain uncashed and in the possession of DHHL until bid opening on May 1, 2009. At that time the Successful Bidder's earnest money deposit shall be deposited and become non-refundable as lease negotiations commence. If negotiations are successfully completed, the deposit shall be applied to future lease rents. All earnest money deposit checks from unsuccessful bidders shall be returned uncashed.

IV. APPLICATION AND QUALIFICATION FORM
For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

Name of Applicant

Person to Contact / Title

Applicant's Address

Contact Person's Address

City, State, Zip Code

City, State, Zip Code

Applicant's Telephone No.

Contact Person's Telephone No.

Applicant's Facsimile No.

Contact Person's Facsimile No.

List of Corporate Officers and Directors or Individual Partners, Joint Ventures or Owners.

Name:_____

Name:_____

Title:_____

Title:_____

Telephone No.:_____

Telephone No.:_____

Address:_____

Address:_____

Name:_____

Name:_____

Title:_____

Title:_____

Telephone No.:_____

Telephone No.:_____

Address:_____

Address:_____

NOTE: Please attach a separate page if more space is needed. Should any information change during the proposal evaluation, selection, and award process, it is the responsibility of the applicant to update DHHL in writing of such changes.

Corporate Shareholders / Partners Holding 25% or More of the Outstanding Shares:

Name: _____

Name: _____

Title: _____

Title: _____

Telephone No.: _____

Telephone No.: _____

Address: _____

Address: _____

Name: _____

Name: _____

Title: _____

Title: _____

Telephone No.: _____

Telephone No.: _____

Address: _____

Address: _____

Applicant intends to bid on the following Parcels:

Property No. _____ TMK No. _____

Intended Use _____

Property No. _____ TMK No. _____

Intended Use _____

Project Description:

Include a narrative and any supportive materials that provides information pertaining of the proposed development at the subject property. Attach additional pages to this application. See Applicant Qualification Criteria for list of requested information.

Project Development Team

	Company / Address	Contact/Person Telephone No./email address
Developer		
Architect		
Civil Engineer		
Site Contractor		
Contractor		
Financing		

Financial Information

Note: Financial information submitted to DHHL shall be kept confidential and shall not be considered as a public record as defined in Chapter 92, Hawaii Revised Statutes. Financial information shall not be released without the express written consent of the applicant.

1. All Applicants shall include the following:
 - (a) If applicable a certified copy of the Articles of Incorporation.
 - (b) If applicable a certified copy of the By-Laws.
 - (c) If applicable, a certified copy of the Corporation Resolution.
 - (d) If applicable, a certified copy of the Partnership Certificate.
 - (e) If applicable, a certified copy of the Joint Venture Agreement.
 - (f) A current Certificate of Good Standing from the Department of Commerce and Consumer Affairs.
 - (g) A current Tax Clearance from the Department of Taxation and Internal Revenue Service.
 - (h) Applicant's proposed plan within 36 month construction period.
 - (i) Detailed budget / cost estimate showing the estimated cost of construction.

- (j) If applicable, a description of any financial default, modification of terms, and conditions of financing to avoid default, or legal actions taken or pending against the applicant and borrowing and guaranteeing entities and their principals.

Please attach a description of the Applicant's company experience which supports the foregoing requirement and which includes the following information:

- (a) A list of industrial / commercial projects developed;
- (b) The role of the applicant in developing the listed industrial / commercial projects;
- (c) A brief description of the industrial / commercial projects;
- (d) If applicable, a description of all industrial / commercial projects or facilities owned and operated by the applicants;
- (e) If applicable, a statement of the applicant's past or current involvement with the Department of Hawaiian Home Lands (DHHL).
- (f) THE UNDERSIGNED APPLICANT, understands that DHHL is relying on the information provided herein to qualify the undersigned as an eligible Developer under the Hawaiian Homes Commission Act, 1920, as amended. The undersigned represents and warrants that the information provided is true and complete and that DHHL may consider the information as continuing to be true and correct until a written notice of a change is given to DHHL by the undersigned. The Undersigned agrees to provide and other information that DHHL deems necessary to determine the qualifications of the applicant.

Name of Company

By:

Signature

Title

Date

V. PUBLIC AUCTION GUIDELINES
For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

The public auction shall be held at 10:00 a.m. on Friday, May 1, 2009, at DHHL's Oahu office located at 91-5420 Kapolei Parkway, Kapolei, Hawaii.

Any person or entity shall be eligible to bid for a general lease at this auction, except a person who:

- a) Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or to any of its political subdivisions;
- b) Is a minor;
- c) Has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof;
- d) Fails to submit a "completed application", as described in the Applicant Qualification Criteria (Section III. A) of this Information Packet, by no later than **4:00 p.m., Friday, January 16, 2009;**
- e) Fails to meet the eligibility criteria as described in the Applicant Qualification Criteria (Section III, A) and has been informed by DHHL, in writing, that applicant has not met the eligibility criteria;
- f) Fails to submit detailed development plan information as described and explained in the Applicant Qualification Criteria (Section III, B) of this Information Packet, including the sealed rent proposal and an "earnest money deposit" in the form of a certified or cashier's check made payable to the Department of Hawaiian Home Lands in the amount of **\$170,625.00** by no later than **4:00 p.m., Thursday, April 16, 2009;** or
- g) Fails to meet any deadline set for submitting additional information, if requested.

All prospective applicants are responsible for thoroughly reading and understanding the terms, covenants, reservations and conditions of the lease offering by reviewing a copy of the Legal Notice of Proposed Disposition, all data contained in the Information Packet, and other informational items available for review in DHHL's Oahu office located at **91-5420 Kapolei Parkway, Kapolei, Hawaii, or at the DHHL District Offices in Hilo and Waimea, Hawaii; Hoolehua, Molokai; Wailuku, Maui and Lihue, Kauai.** By request, out-of-state applicants can make arrangements to obtain the information by contacting DHHL's Income Property Branch at (808) 620-9456.

Prospective applicants are encouraged to physically inspect the property provided DHHL is indemnified and held harmless from personal injury or damages that result from such property inspection. You may make an appointment for a site inspection by contacting DHHL's Income Property Branch at (808) 620-9456, on Oahu.

Furthermore, all prospective applicants are advised that Sandwich Isles Communications, Inc. shall provide telecommunications services for the project.

A general step-by-step procedure established for the Public Auction is as follows:

- Legal Notice of Proposed Disposition first published on Friday, December 5, 2008, in the Honolulu Star Bulletin.
- Prospective Applicants shall have 42 days from the first publication of the Legal Notice in which to contact or visit a DHHL office, pick up an Information Packet, and make an appointment (optional) to review the Appraisal and other informational reports which shall not be removed from DHHL's offices. (Out-of-state applicants may call to make arrangements for delivery of the Information Packet and other informational reports.)
- Any person or entity that intends to bid for a general lease of the property **must** submit a completed application. The completed application must be **received by DHHL no later than until 4:00 p.m. on January 16, 2009.**
- By January 23, 2009, written notices will be sent to all persons or entities that have submitted a completed application on or before the deadline. Those who have met DHHL's objectives and eligibility criteria shall be informed that they are "eligible" to bid. Those not meeting DHHL's objectives and eligibility criteria shall be informed that they are not eligible to bid.
- Eligible Applicants shall have until **4:00 p.m., Thursday, April 16, 2009**, in which to submit detailed development plan information, a rent proposal sealed in a separate envelope (sealed rent proposal), and an earnest money deposit meeting the parameters set out in item "f" on the preceding page. The detailed information submitted by each Eligible Applicant shall be evaluated and those providing sufficient information or meeting DHHL's objectives and criteria shall be deemed "Qualified Applicants. Other Eligible Applicants who do not meet the objective and criteria will be informed of the reason for disqualification.
- **At 10:00 a.m., Friday, May 1, 2009**, in DHHL's Oahu office located at 91-5420 Kapolei Parkway, Kapolei, HI, all sealed rent proposals received from Qualified Applicants not previously disqualified shall be opened for the first time and, after a comparative analysis, the Qualified Applicant who submitted the highest rent proposal shall be deemed the "Successful Bidder" who shall receive formal written notification within a reasonable time thereafter and formal lease negotiations shall commence.

All Qualified Bidders or their authorized corporate representatives are invited, but not required, to attend the opening of the sealed bids.

DHHL reserves the right to negotiate with respect to any and all terms and conditions of the lease, including all rent provisions, such as, but not limited to, provisions for step increases, sublease rent participation and percentage rent, provided that any negotiated adjustments shall

not result in terms and conditions being less than those in the Successful Bidder's proposal which were a material part of the proposal being selected.

Should the Successful Bidder fail to conclude general lease negotiations within 100 days of being formally notified, which deadline DHHL may extend for extenuating and compelling circumstances presented by the Successful Bidder, DHHL reserves the right to negotiate with the next highest Qualified Applicant and such negotiation with the next highest Qualified Applicant shall not constitute a waiver of any rights or recourse that DHHL has or may have against the defaulting Successful Bidder.

Information Packet and Consultant's Reports

The data in the Information Packet, the appraisal report, and all other reports or information provided to prospective applicants have been obtained by DHHL from reputable and reliable sources, however it is NOT GUARANTEED. Applicant is advised to make his/her own independent study to verify the accuracy of the information and determine its usefulness to applicant's project.

VI. CONDUCT OF DISPOSITION
For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

The following procedures, terms and conditions are applicable to this disposition of a general lease of Hawaiian home lands by public auction.

Any proposed disposition of a general lease may be cancelled, postponed or continued by order of the Chairman, Hawaiian Homes Commission.

A. ELIGIBILITY TO BID:

1. A completed application, as defined in the Applicant Qualification Criteria section of this Information Packet, must be submitted to DHHL by **no later than 4:00 p.m., Friday, January 16, 2009.**
2. An applicant may be declared ineligible to bid for any of the following reasons:
 - a) If the completed application is late, incomplete or does not adhere to the format and instructions;
 - b) If it is shown that inaccurate statements were made in the completed application;
 - c) If the applicant fails to provide any of information requested in the Applicant Qualification Criteria;
 - d) Is declared ineligible for reasons cited in the Public Auction Guidelines section of the Information Packet; or
 - e) If its proposal is not in the best interest of the Department of Hawaiian Home Lands' Trust and/or its beneficiaries.
3. By January 23, 2009, each person or entity that has submitted a completed application will be sent a written notice of eligibility or ineligibility to bid.

B. BID QUALIFICATION:

1. Those persons or entities that receiving notices that they are eligible to bid (Eligible Applicants) shall have until **4:00 p.m., Thursday, April 16, 2009**, in which to submit additional information and meet requirements described in the Applicant Qualification Criteria (Section III.B).

2. An Eligible Applicant may be disqualified from bidding for any of the following reasons:

- a) If the additional information is submitted late, incomplete, lacks sufficient detail or does not adhere to the format and instructions;
- b) If it is shown that inaccurate statements were made;
- c) Failure to include a sealed rent proposal (bid) in a separate, sealed envelope by 4:00 p.m., April 16, 2009; and
- d) Failure to provide an earnest money deposit by remitting a certified or cashier's check, payable to the Department of Hawaiian Home Lands in the amount of **\$170,625.00** by no later than 4:00 p.m., April 16, 2009.

3. The information required for Bid Qualification, if submitted on time, shall be reviewed by DHHL. Eligible Applicants shall be notified if they have been disqualified for one of the reasons stated in item 2 above, or because their proposal is not in the best interest of the Department of Hawaiian Home Lands' Trust and/or its beneficiaries. Those Eligible Applicants who meet all conditions of the bid Applicant Qualification Criteria shall be deemed "Qualified Applicants" and shall be invited to attend the opening of the sealed rent proposals on Friday, May 1, 2009, at 10:00 a.m.

Notwithstanding the above paragraph, DHHL may reject any or all bids and waive any defects when, in its opinion, such rejection or waiver will be in the best interest of the department and/or its beneficiaries.

C. DETERMINATION AND DUTIES OF SUCCESSFUL BIDDER

1. At 10:00 a.m., on Friday, May 1, 2009, all sealed rent proposals not previously disqualified (for reasons other than the amount of rent proposed) shall be opened for the first time.

2. Once opened, the rent proposals shall be reviewed by DHHL staff and any rent proposal that does not meet or exceed the minimum upset rent established by market value appraisal for the first year of the lease and enumerated in the Legal Notice (Section II) shall be disqualified.

3. The Qualified Applicant who submits the highest proposed rent for the first year of the lease shall be declared the "Successful Bidder".

4. The earnest money deposit of \$170,625.00 remitted by the Successful Bidder shall be deposited and shall then become non-refundable. All earnest money deposits remitted by unsuccessful or disqualified applicants shall be returned, uncashed.

5. Within one (1) working day of being notified as the Successful Bidder, the Successful Bidder shall execute an affidavit stating that the Successful Bidder is not in arrears in the payment of taxes, rents or any other obligations owing the State of Hawaii or any of its political subdivisions, and that, within the preceding five (5) years, the successful bidder has not had any leases, licenses or permits issued by the State of Hawaii or its political subdivisions, rescinded, cancelled or terminated due to the Successful Bidder's lack of performance.

6. DHHL shall then send the Successful Bidder formal notification confirming the Successful Bidder's selection and the date of the formal notification shall be the commencement of the lease negotiation period.

7. Lease negotiations must be completed and a general lease signed within 100 days of formal notification confirming the Successful Bidder's selection, which is projected to be August 17, 2009, or thereabout. (100 days). Provided negotiations are progressing in "good faith", DHHL reserves the right to extend for extenuating and compelling circumstances presented by the Successful Bidder.

8. Upon signing of the lease, the earnest money deposit of \$170,625.00 shall be applied to the rent first coming due under the lease. In addition, Lessee shall be required to reimburse DHHL for cost of the appraisal, legal fees, consultant fees and other expenses, if any, incurred for this offering (disposition).

D. CANCELLATION

In the event the Successful Bidder fails to comply with the requirements as described above, DHHL may, at its option, declare default on the part of the Successful Bidder, terminate all further negotiations, withdraw the offer of a general lease for the subject property, and retain any amounts paid by the defaulted Successful Bidder as damages. The foregoing shall not exclude any other remedies available to DHHL.

VII. GENERAL PROPERTY INFORMATION

For Business Mixed-Use Development of 820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

The parcels of land (the "Property") being offered for general lease is located at 820 Isenberg Street, Honolulu, Island of Oahu, State of Hawaii, and is identified on the tax maps of the State of Hawaii as Division 1, Zone 2, Section 7, Plat 08, Parcels 18 and 20. The Property is situated in that part of metropolitan Honolulu commonly known as the McCully/Moiliili area.

The Property is located between Kapiolani Boulevard and King Street, two of metropolitan Honolulu's major thoroughfares. The Property has approximately 206.42 lineal feet (eastern boundary) of frontage along Isenberg Street, a six lane, two-way, secondary roadway that includes two parking lanes, curbs, gutters, sidewalks and overhead street lights. The property is bounded on the north and west by Stadium Park (City and County of Honolulu managed and maintained) and on the south by a residential high-rise condominium. The Property is approximately 1 mile from the University of Hawaii, 1.5 miles from Waikiki and 3 miles from downtown Honolulu.

PROPERTY DATA

Legal Description - Deed references, survey maps and legal descriptions of the Property are included in the Information Packet (see Exhibit 1, immediately following this section). Ownership of Lot 3-A (38,719 square feet) and Lot 6 (42,493 square feet) are registered in Land Court, and title to Lot A (1,281 square feet) is recorded in the Regular System of the State of Hawaii, Bureau of Conveyances.

Land Area Tax Map Key No. (1)2-7-08:18 is approx. 40,000 S.F. (Lots A and 3-A).
Tax Map Key No. (1)2-7-08:20 is approx. 42,493 S.F. (Lot 6).
Total combined area is **82,493 S.F. (1.894 acres)** (see Exhibit 2)

Property History - The existing structure was built circa 1955 and was operated as a bowling alley until May 2004. DHHL is not certain of the use of the site prior to 1956, however, old aerial photographs and a review of the historical records indicate that the site was vacant and undeveloped until prior to construction of the bowling alley. DHHL obtained title to the property on June 1, 1995.

Land Use Ordinances - The site is classified within the State Land Use Urban District. Current City and County of Honolulu land use zoning is P-2 General Preservation, however, DHHL has the authority to exempt its property land use zoning and intends to designate the site for development under BMX-3 business mixed-use guidelines.

The property is located in Flood Zones X, indicating it is outside the 500 year flood plain. A review of the Special Management Area maps discloses that the property is not located with this district, and is not subject to the constraints contained therein.

Restrictions/Reservations – Although a recent title report has not been obtained, no easements and/or restrictions were identified by a review of the public records.

Utilities – Public utilities available include water, sewer, gas, electricity, and telephone service. This statement of availability is only intended to inform interested parties that these utilities exist on or within the street fronting the property and does not guaranty that these utilities will be sufficient in meeting the needs of the development planned by said interested party.

Water service is provided by the Board of Water Supply through 12-inch and 30-inch water mains along Isenberg Street. Service to the property is by way of a 2-inch lateral.

Sewer service is provided by the county Department of Environmental Services. Sewer mains in the area include an 8-inch main along Isenberg Street, with a 6-inch lateral to the property. Our informal inquiry with the City and County of Honolulu (City) indicated that if wastewater projections for the new development are not significantly greater than the wastewater generated by the former use of the site as a bowling center, the existing City sewer system can accommodate wastewater flows from the new project. Due to this potential constraint on a higher density development of the property, interested parties are encouraged to check with the county to determine how it may impact their development plan. In Section III. B.3.d of this Information Packet, requires a written statement be submitted by the interested party stating that the sewer constraints were discussed with the City and the proposed conceptual development plan will be able to use the existing sewer system. Said constraint was taken into consideration by the appraisal and the minimum upset rent presented herein reflects the appraiser's adjustment for this constraint. Conversely, during lease negotiations, some discussion may need to take place to consider the future increase in density and value of the leasehold interest which may be occur if and when the wastewater system is upgraded during the term of the lease.

Gas service is provided by The Gas Company through a 2-inch gas main in Isenberg Street and a 5/8-inch line to the property.

Electricity service is provided by Hawaiian Electric Company, Inc.

Telephone service will be provided by Sandwich Isles Communications, Inc.

Cable television service is also available.

PROPERTY DESCRIPTION & CONDITION

Size and Shape - The subject property is irregular in shape and contains a gross land area of 82,493 square feet. The topography, at street grade and throughout is essentially level. The site has approximately 206.42 lineal feet of frontage along Isenberg Street, 326.63 feet along the northern boundary, 445.20 feet along the southern boundary, and 269.66 feet along the western (rear) boundary.

Soils Report – A geotechnical study of soil and sub-soil on the site has not been conducted therefore the load-bearing capacity of the site is presently unknown.

Hazardous Materials/Contaminants – A Phase I Environmental Site Assessment was conducted in April 2001, to evaluate the presence or likely presence of materials considered hazardous to human health and the surrounding environment. A copy of the assessment report is available for review, however, due to the limited number of copies, the report will not be included in the Information Packet, and can only be reviewed in a DHHL office. Anyone wishing to review the report should call Ms. Marla Wain, at (808) 620-9456 to make an appointment to do so.

Improvements – The existing improvements on the site consist of a concrete and steel structure last known as the University Bowl-O-Drome (formerly Stadium Bowl-O-Drome). Since it was built, circa 1955, the structure has only been used as a bowling facility, however, all bowling activities ceased in May 2004, and the building has been closed. The structure covers a gross area of approximately 22, 346 square feet.

Much of the remaining property surrounding the building is asphalt paved and was used as a customer parking lot. It is currently rented on a month-to-month basis as a base yard for Oahu Auto Towing.

DHHL does not have architectural drawings for the building. Although the building could be renovated for other uses, it does not maximize the development potential of the site. The minimum upset rent for the first year, as stated in the Legal Notice (Section II), is based on land value only.

VIII.

EXHIBIT 1

**For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu**

(Exhibit 1 - Legal Description of the Property, including copy of survey maps)

VIII.

EXHIBIT 1

For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

Deed No. S-28083 Class Quitclaim

Grantor
STATE OF HAWAII

Grantee
Department of Hawaiian Home Lands, by its
Hawaiian Homes Commission

Date of Instrument	Book	Page	Area
6/1/95	Document No. 95-076589	82,490 sf	
	Document No. 2242167	1.894 acres	

Description

Conveyance of Part 1, being Lot 3-A, Map 4, Land Court 1583, TCT 174,168 to State (38,719 sf or .889 ac), Part being Lot 6, Map 5, Ld. Ct. Appln 1583, TCT 174,168 to (42,493 sf or .976 ac) (TCT 457,819 to Hawaiian Home Land and Part 2, being portion of RP 4475 & 7789, LCAw 7713, 39 (1,281 sf or .029 ac), situate at Kapaakea, Waikiki, Honolulu, Oahu (CSF No. 22,237)
Tax Map Key 2-7-8:18(Por.) and 2-7-8:20



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 22,244

January 26, 1995

BOWL-O-DROME SITE

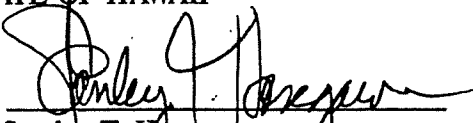
PART 1

Kapaakea, Waikiki, Honolulu, Oahu, Hawaii

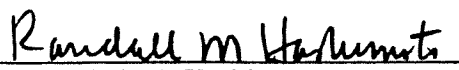
Being all of Lot 3-A containing an AREA OF 38,719 SQUARE FEET
as shown on Map 4 of Land Court Application 1583, filed in the Office of the
Assistant Registrar of the Land Court of the State of Hawaii, covered by Certificate
of Title 174,168 issued to the State of Hawaii (Land Office Deed S-26468).

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By:


Stanley T. Hasegawa
Licensed Land Surveyor No. 3632 gm

Reviewed and Approved by:


Randall M. Hashimoto
Acting State Land Surveyor

KING STREET



ISENBERG STREET

TERRITORY OF HAWAII

LAND COURT APPLICATION 1583
SUBDIVISION OF LOT 3
AS SHOWN ON MAP 3
INTO LOTS 3-A AND 3-B
KAPAAKEA AND HALEPAKA, WAIKIKI, HONOLULU,

419 S.M. Damon Bldg
Honolulu, T. H.
April 15, 1955

Frederick E. ...
Surveyor and
Registered C

OWNER: HONOLULU STADIUM LIMITED

Owner's Certificate of Title: 49,876

AUTHORIZED AND APPROVED BY ORDER
JUDGE OF THE LAND COURT DATED: M
BY ORDER OF THE COURT: *Charles ...*
Cust. REGISTRAR

I hereby certify this print to be a true
and correct copy of tracing map filed with
subdivision of Land Court Application
1583 and approved MAY 5, 1955
Honolulu T.H. *James M. Dunn*
MAY 5, 1955
DEVELOPER, TERRITORY OF HAWAII



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 22,238

January 18, 1995

BOWL-O-DROME SITE

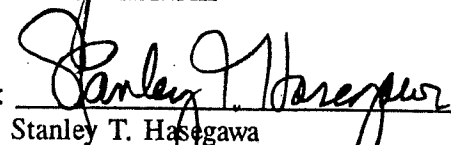
PART 3

Kapaakea, Waikiki, Honolulu, Oahu, Hawaii

Being all of Lot 6 containing an AREA OF 42,493 SQUARE FEET as shown on Map 5 of Land Court Application 1583, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, covered by Certificate of Title 174,168 issued to the State of Hawaii (Land Office Deed S-26468).

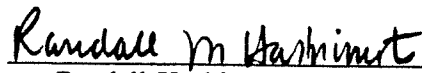
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By:


Stanley T. Hasegawa
Licensed Land Surveyor No. 3632

gm

Reviewed and Approved by:


Randall Hashimoto
Acting State Land Surveyor

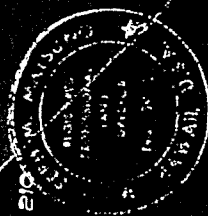
LAND COURT APPLICATION

SUBDIVISION OF LAND
AS SHOWN ON MAP
INTO LOTS 5 AND 6

KAPAAKEA AND HALEPAKA, WAIKIKI, HONOLULU

DEPARTMENT OF LAND AND NATURAL RESOURCES

Register of Land



1151 Punchbowl St., Room 210
Honolulu, Hawaii
October 17, 1991

OWNER: State of Hawaii
TRANSFER CERTIFICATE OF TITLE

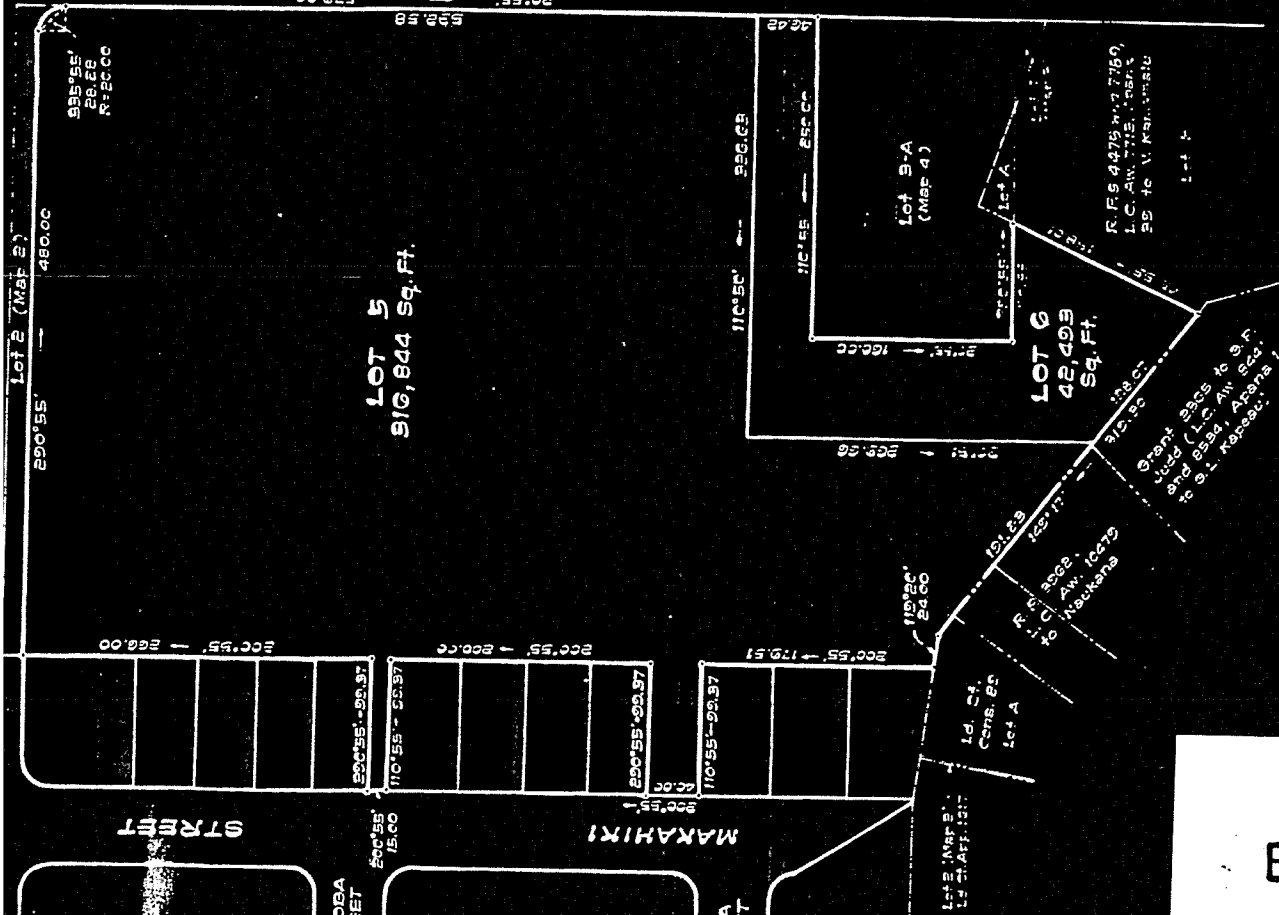
AUTHORIZED AND APPROVED BY
THE LAND COURT DATED AUGUST 1991
BY ORDER OF THE COURT.

Registrar

I hereby certify this print to be a true and correct copy of the original subdivision of land court application.

ISENBERG STREET

ISENBERG STREET





STATE OF HAWAII

SURVEY DIVISION

**DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU**

C.S.F. No. 22,237

January 18, 1995

BOWL-O-DROME SITE

PART 2

Kapaakea, Waikiki, Honolulu, Oahu, Hawaii

Being a portion of Royal Patents 4475 and 7789, Land Commission Award 7713, Apana 39 to V. Kamamalu, conveyed to the State of Hawaii by Honolulu Stadium Limited by deed dated March 31, 1975 and recorded in Liber 10,539, Page 95 (Land Office Deed S-26468).

Beginning at the east corner of this parcel of land and at the west corner of Lot 4 as shown on Map 3 of Land Court Application 1583, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 7610.94 feet South and 7650.21 feet East, thence running by azimuths measured clockwise from True South:-

1. 110° 55' 90.62 feet along the remainder of R.P. 4475 and 7789, L.C.Aw. 7713, Apana 39 to V. Kamamalu;
2. 225° 55' 31.19 feet along Lot 3-A as shown on Map 4 of Land Court Application 1583;
3. 310° 58' 82.44 feet along Lot 3-A as shown on Map 4 of Land Court Application 1583 to the point of beginning and containing an AREA OF 1281 SQUARE FEET.

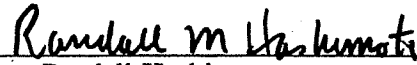
January 18, 1995

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: 

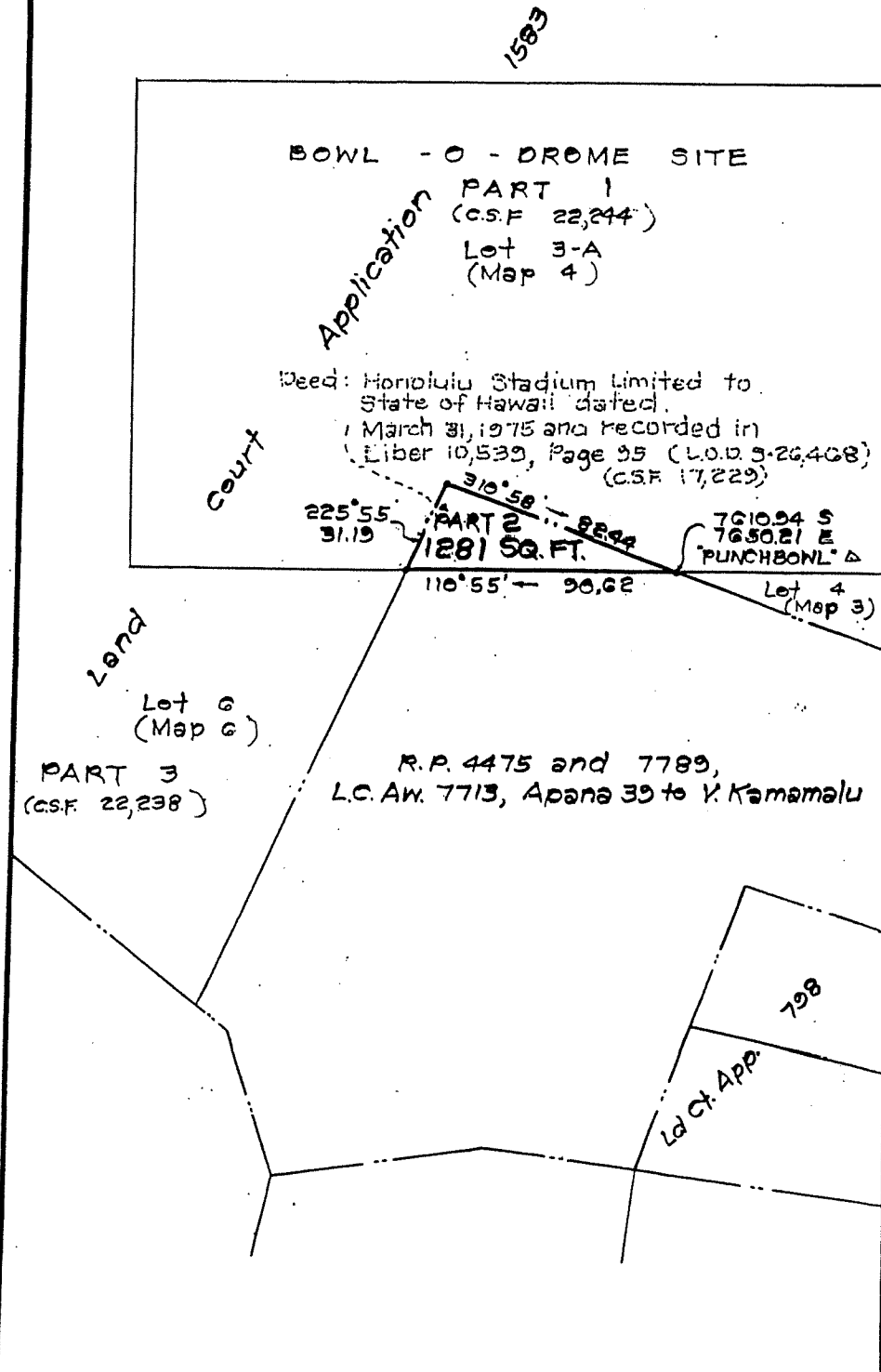
Stanley T. Hasegawa
Licensed Land Surveyor No. 3632 gm

Reviewed and Approved by:



Randall Hashimoto
Acting State Land Surveyor

Compiled from Deed in Liber
2963, Pg. 305, Ld.Ct.App.
1583, C.S.F. 17,229 and
Gov't. Survey Records.



to King St.

TRUE NORTH
 Scale: 1 in = 50 ft.

ISENBERG STREET

BOWL - O - DROME SITE
PART 2
 Kapaakea, Waikiki, Honolulu, Oahu, Hawaii
 Scale: 1 inch = 50 feet

IX.

EXHIBIT 2
For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

(Tax Map Plat)

IX.

EXHIBIT 2
For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu

1583 ST	FIRST DIVISION	2	7	08
	ZONE	SEC	FLA	
	CONTAINING			PAGE
	Scale: 1 in = 40 ft			

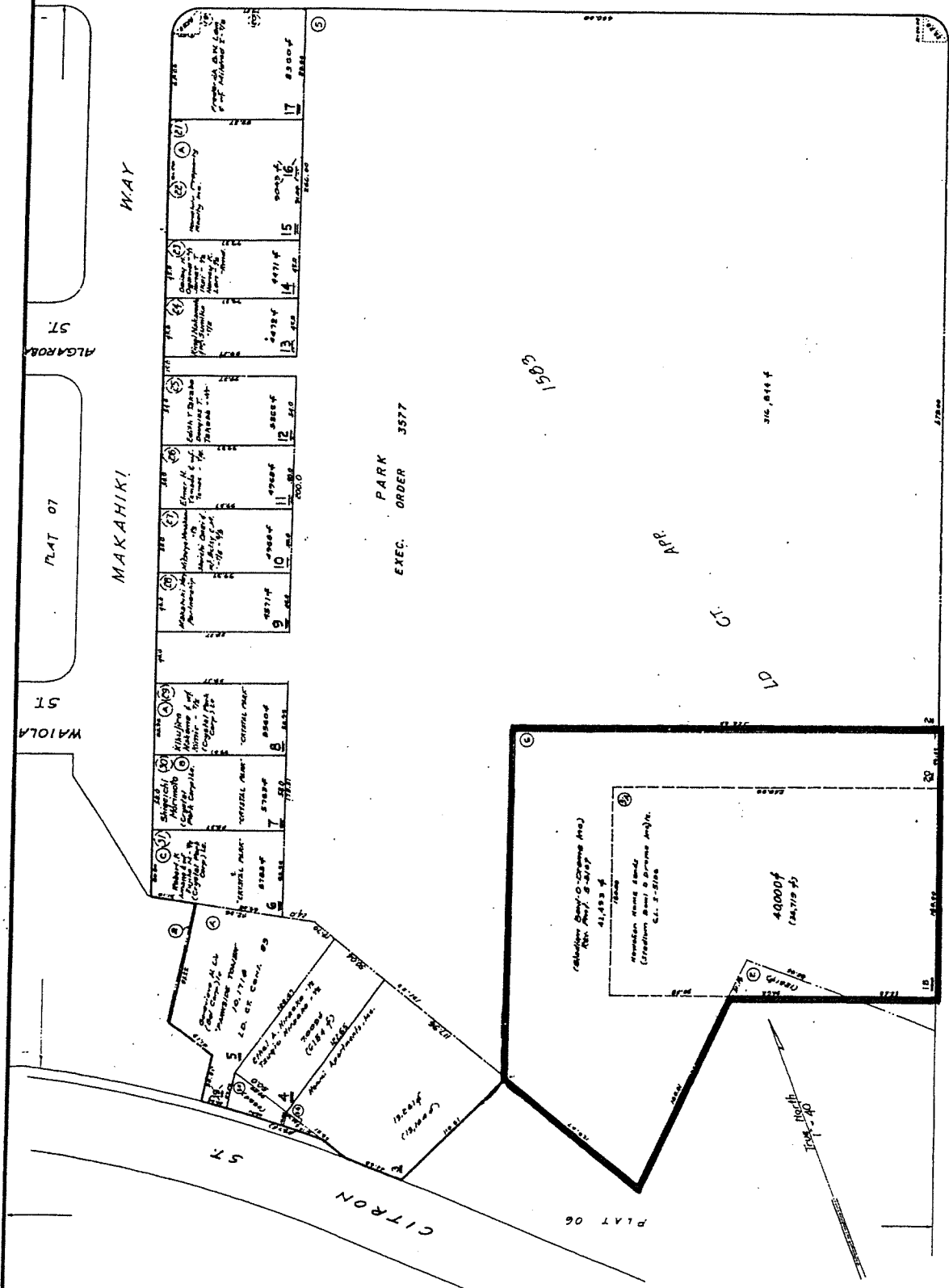
PRINTED

ADVANCE SHEET
SUBJECT TO CHANGE

Plat 09

260

WAIKIKI MAUKA



Map Bureau
Sept. 1932

IX.

EXHIBIT 2

**For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu**

(Tax Map Plat)

X.

**PROFORMA OF TYPICAL DHHL
GENERAL LEASE DOCUMENT***
**For Business Mixed-Use Development of
820 Isenberg Street, McCully/Moiliili, Honolulu, Oahu**

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _____

between

STATE OF HAWAII

and

covering

HAWAIIAN HOME LANDS

situate at

_____ Island of _____, Hawaii

** This document is a template used to initiate lease negotiations between the parties. Through negotiations, the parties may mutually agree to amend, add or delete any of the terms and conditions except those that are required by statute or DHHL policy.*

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STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

GENERAL LEASE NO. _____

THIS INDENTURE OF LEASE (the "Lease"), is made as of the _____ day of _____, 200____, but shall be effective on the date set forth below, by and between THE STATE OF HAWAII, by its DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 1099 Alakea Street, 20th Floor, Honolulu, Hawaii 96813, and whose post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and _____, a _____ corporation, whose business and mailing address is _____, hereinafter called "LESSEE."

W I T N E S S E T H:

ARTICLE ONE
DEMISE

1. Lease. LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of LESSEE to be kept, observed and performed, does lease to LESSEE, and LESSEE does lease from LESSOR, those certain premises located at _____, Island of _____, Hawaii, comprising _____ acres, more or less, of Hawaiian Home Lands, more particularly described in **Exhibit "A"**, and as shown on the map marked **Exhibit "B"**, both attached hereto and made a part hereof ("Premises").

2. Term. The Premises are demised unto LESSEE TO HAVE AND TO HOLD, together with all buildings, improvements, tenements, rights, easements, privileges appurtenant thereto, but subject to the terms and conditions of this Lease, for a term commencing on _____, 200____ (which shall be the Effective Date of the Lease), and ending as of midnight on _____, unless sooner terminated as hereinafter provided.

ARTICLE TWO
RESERVATIONS AND RIGHT OF WITHDRAWAL

RESERVING UNTO LESSOR THE FOLLOWING:

1. Minerals and Waters.

(a) All minerals as hereinafter defined, in, on, or under the Premises, except that the right to prospect for, mine and remove such minerals shall be suspended during the term of this Lease. "Minerals," as used herein, shall mean any and all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral

substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and when used in construction in furtherance of LESSEE’s permitted activities on the demised Premises and not for sale to others. This provision is intended only to govern extraction of minerals and not to impair in any manner LESSOR’s ownership of the mineral rights pursuant to Sections 171-58 and 182-2 of the Hawaii Revised Statutes.

(b) All surface waters, ground waters, and water systems, appurtenant to the Premises, provided that such reservation shall not include the right to enter the Premises to capture, divert, or impound the same or to occupy and use any of the Premises in the exercise of this reserved right.

2. Prehistoric and Historic Remains. LESSOR has reviewed its files and records and determined that it has no information, reports or inspections reflecting that there are any prehistoric or historic remains or sites of archaeological significance present at the Premises. If, however, any area is rendered unsuitable for development as a result of the discovery of sites of archaeological significance or prehistoric or historic remains, such sites or remains shall be excluded from the Premises demised to LESSEE with an equitable adjustment of the rental payable hereunder determined in the manner provided in Section 5 of this Article Two. Except as provided above, LESSEE assumes the risk of any sites of archaeological significance or prehistoric or historic remains found on the Premises, including the risk of any delays arising out of the investigation, or the protection or removal of such sites or remains.

3. Right of Withdrawal. The right to withdraw all or any portion of the Premises for the purposes of the Hawaiian Homes Commission Act, 1920 (the “Act”), as reserved by Section 204(a)(2) of the Act. The right to withdraw reserved under this Section 3 of Article Two shall be exercised only after not less than two (2) years prior written notice to LESSEE. As a condition to the exercise by LESSOR of any rights reserved in this Section 3 of Article Two, just compensation shall be paid to LESSEE for any of the Premises and/or LESSEE’s improvements so withdrawn or rendered unsuitable for LESSEE’s intended use, which amount is to be determined in the manner set forth in Section 5 of this Article Two, and the annual base rental under this Lease will also be proportionately reduced also as provided in Section 5 of this Article Two.

4. Reservation of Easements in Favor of LESSOR. LESSOR hereby reserves the right and option, with the reasonable consent of LESSEE, to create, designate, grant and relocate from time to time, at its sole cost and expense, any and all necessary easements for underground utilities and services, including drainage, water, sewer, electricity and other utilities under, across and through the Premises, provided that (a) such easements do not cross through or under any permanent structures constructed on the Premises or planned to be constructed on the Premises, and (b) the work to construct and install any such easements shall be done, and the easement shall be utilized, in such a fashion as to cause no disruption with LESSEE’s operations or use of the Premises. Upon completion of any such work by LESSOR the surface of the Premises shall be returned, at LESSOR’s sole cost and expense, to substantially the same condition as it was prior to installation of any underground utility.

5. Compensation for Takings, Withdrawal and other Entry or Actions Reserved in Favor of LESSOR. In the event all or any portion of the Premises is taken or withdrawn, or LESSEE is denied the practical and economic use thereof by any other entry or actions or matters reserved to LESSOR under this Lease, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain. If at any time during the term, a portion, but not all, of the Premises should be taken or withdrawn, or LESSEE is denied the practical and economic use of such portion, then and in any such event, the annual base rental shall be proportionately reduced based upon the ratio between the fair market value of the Premises prior to such taking, withdrawal, or use denied to the fair market value of the Premises remaining after such taking, withdrawal, or use denial. In such event, LESSEE shall also be entitled to receive from LESSOR a portion of the value of LESSEE's permanent improvements situated on the taken, withdrawn, or use denied portion of the Premises in the proportion that the unexpired term of the Lease bears to the entire term of the Lease, provided, that LESSEE may, in the alternative, remove and relocate its improvements to the remainder of the Premises occupied by LESSEE. Where the portion taken, withdrawn, or use denied renders the remainder of the Premises unusable in LESSEE's reasonable determination, LESSEE shall have the option to surrender this Lease in accordance with Section 17 of Article Four below or partially surrender this Lease as to the portion of the Premises so affected, and be discharged and relieved from any further liability therefor. In the event LESSEE shall not exercise such option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected, then the annual base rental for the balance of the term shall be abated and adjusted in an equitable manner as set forth above. In the event that LESSEE reasonably exercises its option to surrender this Lease or partially surrender this Lease as to the portion of the Premises so affected by reason of a partial taking, withdrawal or use denial, LESSEE shall be entitled to just compensation as if LESSOR had elected to take, withdraw or deny the use of the entire Premises or the portion of the Premises so affected under the Lease and LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises or the portion of the Premises and all improvements thereon, had been condemned by the State of Hawaii under its power of eminent domain as more particularly set forth above.

ARTICLE THREE

RENTAL

LESSEE shall pay to LESSOR at the office of the Department of Hawaiian Home Lands, Honolulu, Oahu, State of Hawaii, a net annual rental as provided hereinbelow, payable in advance, without notice or demand and without any set-off or deduction, in equal monthly installments, as follows:

1. Annual Base Rental. Annual base rental shall be paid on the first day of each and every calendar month from and after the Rent Commencement Date by LESSEE to LESSOR at LESSOR's principal place of business first described above, in United States dollars, as follows:

Lease years 1 through 10: _____ Dollars (\$_____) per annum (\$_____) per month, from and after the Rent Commencement Date only);

Lease years 11 through 15: _____ Dollars (\$_____) per annum (\$_____) per month);

Lease years 16 through 20: _____ Dollars (\$_____) per annum (\$_____) per month); and

Lease years 21 through 25: _____ Dollars (\$_____) per annum (\$_____) per month).

Lease years 26 through 65: annual base rental shall be reopened as provided in Section 2 below.

Base rental payable for any month shall be proportionately reduced for any partial month during the term. The "Rent Commencement Date" is that date which is the earlier of (a) _____ or (b) the date on which LESSEE opens the Premises for business. The first lease year shall commence on the Effective Date with succeeding lease years commencing on each succeeding anniversary of such Effective Date.

LESSOR holds LESSEE's bid deposit in the amount of \$_____. This amount will be applied to pay the first rents coming due from LESSEE under the Lease.

2. Reopening of Annual Base Rental. The annual base rental hereinabove reserved shall be reopened and re-determined at the expiration of the twenty-fifth (25th) lease year of the term for the next ensuing ten-year period comprising lease years 26-35 and shall be reopened and redetermined at the expiration of the 35th, 45th and 55th lease years for each of the next ensuing three (3) ten-year periods comprising lease years 36-45, 46-55 and 56-65, respectively, to an amount equal to the then fair market rental value of the Premises at the commencement of such reopening period as if the Premises were unencumbered by this Lease and based on the use or uses then permitted to be made on the Premises under the applicable County zoning, as such uses may be further restricted by the terms of this Lease (referred to hereafter as the "fair market rental value" of the Premises), all as shall be determined by mutual agreement between LESSOR and LESSEE. If LESSOR and LESSEE fail to mutually agree upon the fair market rental value of the Premises which will be the annual base rental for the reopening period at least ninety (90) days prior to the commencement of each of the reopening periods, the proposed new annual base rental shall be determined by an appraiser whose services shall be contracted for by LESSOR who shall determine the fair market rental value of the Premises; provided, that should LESSEE fail to agree upon the fair market rental value of the Premises as determined by LESSOR's appraiser, LESSEE shall promptly appoint its own appraiser and give written notice thereof to LESSOR, and in case LESSEE shall fail to do so within thirty (30) days after being advised of the fair market rental value as determined by LESSOR's appraiser, LESSOR may apply to any person then sitting as judge of the Circuit Court of the judicial circuit in which the Premises are located for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall have thirty (30) days (or such additional time as LESSOR and LESSEE shall

mutually agree) to resolve any disagreement on the fair market rental value determination and settle the reopened rent for the ensuing reopening period. Should both appraisers fail to agree upon the fair market rental value of the Premises within this 30-day period (as the same may be extended by mutual agreement of LESSOR and LESSEE), they shall appoint a third appraiser. In case of their failure to do so within fifteen (15) days, either party may have the third appraiser appointed by the judge and the fair market rental value of the Premises shall be determined by arbitration as provided in Chapter 658A, Hawaii Revised Statutes. Each appraiser, whether appointed by a party to the Lease or by the Circuit Court, shall have the following minimum qualifications: at least five (5) years experience in appraising commercial real property and hold a current MAI or SREA designation. The decision of the appraisers or a majority of them shall be final, conclusive and binding upon both parties hereto. The appraisers so appointed shall deliver their determination before the ninetieth (90th) day following appointment of the third appraiser, and, in the event they shall fail to do so and the time for delivery of such determination shall not have been extended by mutual agreement of LESSOR and LESSEE, the employment of the appraisers shall immediately terminate and, except as may be approved by LESSOR and LESSEE in the exercise of their sole and absolute discretion with respect thereto, the appraisers shall not be entitled to any payment for services or reimbursement of expenses incurred because of such appointment. In the event the employment of the appraisers shall be so terminated, new appraisers shall be appointed in the manner hereinbefore provided. LESSEE shall pay for its own appraiser, LESSOR shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by LESSEE and LESSOR. Upon completion of the arbitration procedure, all appraisal reports shall become part of the public record of LESSOR. If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, LESSEE shall continue to pay the rent effective for the previous rental period, but LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any plus interest thereon at the rate of ten percent (10.0%) per annum from the due date for each payment of the additional rent.

ARTICLE FOUR

THE PARTIES HEREIN COVENANT AND AGREE AS FOLLOWS:

1. Payment of Rent. LESSEE shall pay the rent to LESSOR at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place LESSOR may from time to time designate, in legal tender of the United States of America.

2. Taxes and Assessments. (a) LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, are now or may be assessed by governmental authorities during the term of this Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only those installments, together with interest, which become due and payable during the term; (b) LESSEE shall reimburse to LESSOR, upon demand, any and all conveyance and transfer taxes payable with respect to this transaction, or with respect to any document to which LESSEE is a party, creating or transferring an interest or an estate in the Premises; and (c) LESSEE shall have the right to

contest any tax, rate, assessment or other charge imposed against the Premises provided, however, that any such proceeding shall be brought by LESSEE only after payment by LESSEE as hereinabove provided of such taxes, assessments or other charges or impositions if required by law as a condition to bringing such proceeding, and if any such proceeding be brought by LESSEE, LESSEE shall defend, indemnify and save harmless LESSOR against any and all loss, costs or expenses of any kind that may be incurred by or imposed upon LESSOR in connection therewith. LESSOR agrees to reasonably cooperate with LESSEE in any application or proceeding to contest such tax, rate, assessment or other charge, provided that all reasonable costs and expenses of LESSOR incurred in connection therewith shall be paid by LESSEE.

3. Utility Services. LESSEE shall pay or caused to be paid all utility charges, duties, rates and, other similar outgoings, including water, sewer, gas, refuse collection, recycling, relocation of utility poles and lines or any other charges, as to which the Premises or any part, or any improvements, or LESSOR or LESSEE in respect thereof, may become liable for during the term, whether assessed to or payable by LESSOR or LESSEE. LESSEE, at its sole cost and expense, shall be responsible for bringing any and all necessary utility connections to the Premises for its contemplated improvements. Throughout the term of this Lease, LESSEE shall purchase all telecommunication services for the Premises from Sandwich Isles Communications, Inc. ("SIC").

4. Improvements Required by Law. LESSEE will, at LESSEE's own expense during the whole of the term, make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Premises or any part thereof.

5. Observance of Laws. LESSEE will at all times during the term keep the Premises in a strictly safe, clean, orderly and sanitary condition, free of any nuisance or improper or offensive use, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Premises or any improvement thereon or use thereof, and will defend, indemnify and hold harmless LESSOR against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance by LESSEE of said laws, ordinances, rules and regulations or of this covenant.

6. Inspection of Premises. Upon reasonable notice, LESSEE will permit LESSOR and its agents at all reasonable times during the term of this Lease to enter the Premises and examine the state of repair and condition of the Premises. LESSEE will repair and make good at LESSEE's own expense all defects required by the provisions of this Lease to be repaired by LESSEE of which written notice shall be given by LESSOR or its agents within thirty (30) days after the giving of such notice, or if such defect is not reasonably susceptible to repair within said thirty (30) day period, LESSEE shall undertake to repair such defect within said thirty (30) day period and shall diligently and expeditiously proceed to complete the steps or action necessary to repair the defect. If for any reason LESSEE shall fail to commence and complete such repairs within the time period specified herein, LESSOR may, but shall not be obligated to, make or cause to be made such repairs and shall not be responsible to LESSEE or anyone claiming by,

through or under LESSEE for any loss or damage to the occupancy, business or property of any of them by reason thereof (except to the extent such loss or damage is the result of the gross negligence or willful misconduct of LESSOR or LESSOR's agents or employees in effecting any such repairs), and LESSEE will pay to LESSOR, within ten (10) days following written demand by LESSOR, and as additional rent, all costs and expenses paid or incurred by LESSOR in connection with such repairs.

7. Improvements.

(a) Governmental Approvals and Permits. Before commencing any construction of buildings or improvements on the Premises, LESSEE shall seek and secure all approvals and permits which may be required from any governmental authority having jurisdiction thereof, including, without limitation, governmental requirements from time to time in effect regarding land, air and water use or emissions and noise emissions and Hazardous Materials. LESSEE shall bear all costs and expenses of obtaining the necessary approvals and permits.

(b) Construction of Improvements. LESSEE will not construct or place on the Premises any building or other improvement, including fences and walls, nor make any additions or structural alterations costing more than Fifty Thousand Dollars (\$50,000) to any building thereon, nor erect or place any signs or other exterior fixtures on the Premises, except in accordance with plans and specifications, including a detailed plot plan, which shall be prepared by a licensed architect, first submitted by LESSEE and approved in writing by LESSOR. In connection with any request for approval of plans by LESSEE, LESSOR may, but shall not be obligated to, retain the services of an architect and/or engineer, and the reasonable fees of such architect and/or engineer to LESSOR shall be reimbursed to LESSOR by LESSEE. LESSOR may without further reason withhold approval of any alterations, additions and improvements if the plans or specifications therefor are not acceptable to the architect or engineer (if any) retained by LESSOR to review the same. LESSOR's approval of any plans or suggestions for the revision thereof shall not be construed to be an agreement or representation on LESSOR's part of adequacy or suitability for their intended purpose, of the alterations, additions and improvements shown or their compliance with applicable building codes or other governmental requirements.

(c) Bond and Financial Information. LESSEE will before commencing construction of any improvements within the Premises in excess of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) deposit with LESSOR either: (i) copies of a contractor's performance bond and a labor and materials payment bond naming LESSOR as an additional obligee thereunder in an amount equal to one hundred percent (100%) of the estimated construction cost of the improvements to be made on the Premises, with a surety reasonably satisfactory to LESSOR, to assure the performance by the contractor of the contract for the construction of such improvement on the Premises, and the completion of such construction work, free and clear of all mechanics' and materialmen's liens; or (ii) a written guaranty of performance and payment of the construction contract(s) for the improvements planned for the Premises from a person or entity of size and substance satisfactory to LESSOR, in LESSOR's reasonable judgment, in favor of LESSOR, and guaranteeing the performance of the construction contract(s) and completion of such work free and clear of all mechanic's and materialmen's

liens; or (iii) an irrevocable standby letter of credit issued by a recognized financial institution, as reasonably determined by LESSOR to be satisfactory, to assure performance of any construction contracts for and payment of all labor, materials, services or other work done by or on behalf of LESSEE (or any affiliated parties, contractors, materialmen or subcontractors) in connection with the improvements planned for the Premises. LESSEE shall also provide LESSOR with such information and evidence as LESSOR may reasonably require to assure LESSOR that LESSEE is able to and will make all payments required by the construction contract(s) for the improvements to be made to the Premises, as and when LESSEE is required to do so.

(d) Compliance with the Americans with Disabilities Act of 1990.

(i) Applicable Laws. LESSEE shall cause drawings and specifications to be prepared for, and shall cause to be performed, any construction, alteration or renovation of the Premises, including signage, in accordance with all applicable laws, ordinances and regulations of all duly constituted authorities, including, without limitation, Title III of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. 12181-12183, 12186(b)-12189, the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. 2000a et. seq., the Architectural Barriers Act of Rehabilitation Act of 1968, 42 U.S.C. 4151 et. seq., as amended, Title V of the Rehabilitation Act of 1973, 29 U.S.C. 790 et seq., the Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. Part 1190, and the Uniform Federal Accessibility Standards, as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented (all such laws, ordinances, regulations and guidelines regarding access collectively called "Public Accommodations Laws").

(ii) Responsibility for Compliance. Notwithstanding LESSOR's review of such drawings and specifications, and whether or not LESSOR approves or disapproves such drawings and specifications, LESSEE and not LESSOR shall be responsible for the compliance of such drawings and specifications with all Public Accommodations Laws. LESSEE shall defend, pay, indemnify and hold LESSOR harmless against all reasonable costs and expenses (including reasonable attorney's fees), losses, damages and liabilities incurred by LESSOR which may be attributable to: (A) LESSEE's alleged failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation; (B) LESSOR's investigation and handling (including the defense) or LESSEE's failure to comply with any Public Accommodations Law or any other applicable governmental law, rule or regulation, whether or not any lawsuit or other formal legal proceeding shall have been commenced in respect thereof; (C) any amounts assessed against LESSOR pursuant to any Public Accommodations Law based upon LESSOR's ownership of the Premises; and (D) LESSOR's enforcement of this paragraph, whether or not suit is brought therefore. All the above amounts shall constitute additional rent and shall be payable on demand with interest at the rate of ten percent (10.0%) per annum.

8. Repairs to Improvements. LESSEE shall at its own expense, keep, repair and maintain all buildings and other improvements now existing or hereafter constructed or installed on the Premises in good and safe order, condition and repair, reasonable wear and tear excepted.

9. Assignment.

(a) No Assignment Without Consent. LESSEE shall not assign this Lease without the prior written consent of LESSOR, which consent LESSOR shall not unreasonably withhold. Any assignment without LESSOR's prior express written consent shall be void.

(b) Assumption of Lease. Any assignment of this Lease shall be specifically made and therein expressly stated to be made subject to all terms, covenants and conditions of this Lease, and the assignee therein shall expressly assume and agree to all such terms, covenants and conditions.

(c) Compliance with Hawaii Revised Statutes §171-36(a)(5). LESSOR may withhold its consent to any assignment unless the assignment meets the requirements of Hawaii Revised Statutes §171-36(a)(5), or any other successor statute imposing conditions on the assignment of leases of Lessor's lands.

(d) No Change of Use. No assignment will be permitted if the assignee contemplates or proposes any change in the use of the Premises from that expressly permitted by this Lease.

(e) LESSOR's Response. LESSOR shall respond to any request for its consent to an assignment of this Lease within thirty (30) days following LESSOR's receipt of all financial statements, documents and other information reasonably necessary for LESSOR to make its determination (or within such longer time as may be reasonably required by it and of which it shall notify LESSEE within such thirty (30) day period). If LESSOR shall fail to approve or disapprove of a request for consent within the thirty (30) day period as the same may be extended, LESSOR's approval shall be conclusively presumed.

(f) "Assignment" Defined. The term "assignment" as used in this Lease shall mean and include one or more sales or transfers by operation of law or otherwise by which:

(i) if LESSEE is a corporation, an aggregate of fifty percent (50%) or more of the total common stock or any class of voting stock of LESSEE;

(ii) if LESSEE is a partnership, an aggregate of fifty percent (50%) or more of the total partnership interests of LESSEE or a change of control of any general partner of LESSEE;

(iii) if LESSEE is a limited liability company, whether member-managed or manager-managed, an aggregate of fifty percent (50%) or more of the total membership interests of LESSEE or a change of control of any managing member of LESSEE;

(iv) if the LESSEE is any other form of entity, an aggregate of fifty percent (50%) or more of the legal, beneficial or other cognizable interests therein or in the governance, administration or control thereof;

shall become vested in one or more individuals, firms, associations, corporations, partnerships, limited liability companies or other entities, or any derivative or combination thereof, who or which did not own directly not less than a ten percent (10%) interest, legally or equitably, in the LESSEE as of the Commencement Date or as of the date of LESSEE's subsequent acquisition of this Lease by assignment, with the ownership of such interests in LESSEE being determined in accordance with the principles enunciated in Sections 318 and 544 of the Internal Revenue Code of 1986; provided, however, that the foregoing definition shall not apply with respect to a corporate LESSEE whose capital stock is listed on a recognized stock exchange or on the NASDAQ; provided, however, that a merger or acquisition of fifty percent (50%) or more of the outstanding stock of any such LESSEE shall be construed to be an assignment and shall require Landlord's consent unless the successor or acquiring corporation has a net worth equal to or greater than LESSEE had at the time this Lease was executed, or at the time of any such merger or acquisition (whichever shall be the later); and provided further that, if LESSEE is a corporation, a change in ownership of the stock of LESSEE resulting from the death of a stockholder shall not be deemed a default hereunder if the decedent's shares pass to a surviving spouse and/or issue or to a trust for the primary benefit of such spouse or issue.

10. Subletting. LESSEE shall not, without the prior written consent of LESSOR, which consent will not be unreasonably withheld or delayed, have the right to sublease all or any portion of the Premises.

11. Liens. LESSEE will not commit or suffer any act or neglect by which the Premises or the respective estates of LESSEE or LESSOR therein shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance whatsoever, including mechanics' and materialmen's liens, and will indemnify, defend, save and hold LESSOR harmless from and against all loss, cost and expense with respect thereto (including reasonable attorneys' fees). If any order directing the attachment of any lien for work, labor, services or materials done for or supplied to the Premises regardless of who contracted therefor is filed against the Premises, LESSEE shall have sixty (60) days from the date of filing in which to cause such lien to be discharged of record by payment, deposit or bond or otherwise stayed to the reasonable satisfaction of LESSOR. Subject to the foregoing, LESSEE may contest in good faith by any appropriate proceedings prosecuted in a diligent and timely manner, the amount or validity of any such attachment, judgment, lien, charge or encumbrance, and, if permitted by applicable law, upon making deposit or posting bond, may defer payment thereof until final determination of such contest. LESSEE's obligations under this Section 11 shall survive the termination of this Lease.

12. Permitted Uses. The Premises will be used only for the following purposes: _____. In no event shall the Premises be used for the construction of any residential lots, units or project.

13. Indemnity.

(a) LESSEE will indemnify and hold LESSOR harmless from and against all liens, claims and demands for loss or damage, including property damage, personal injury and wrongful death, from (i) any cause whatsoever arising out of or in connection with the use,

occupancy and enjoyment of the Premises by LESSEE or any other person thereon or claiming under it, including, without limitation, any harm resulting therefrom to LESSOR, persons claiming under LESSOR, other tenants of LESSOR, third parties, the aquifer underlying the Premises, the water therein, the soil of the Premises and surrounding lands and the air, or (ii) any failure by LESSEE to keep the Premises and sidewalks in a safe condition. LESSEE will reimburse LESSOR for all of LESSOR's costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such liens, claims, and demands. LESSEE will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at its sole risk and will hold LESSOR harmless from and against any loss or damage thereto by any cause whatsoever. The obligation to indemnify shall include all fines and penalties and all reasonable costs LESSOR may incur in connection with any such lien, claim and demand, including reasonable attorneys' fees and investigation costs, from the first notice that any lien, claim or demand is to be made or may be made. LESSEE shall satisfy LESSOR of its ability to so indemnify LESSOR by means satisfactory to LESSOR, which, at the discretion of LESSOR, may include any or all of insurance bonds, security deposits, sinking funds or such other means as may be approved in writing by LESSOR. LESSEE's obligations under this section shall survive the termination of other determination of this Lease and shall continue in full force and effect for the benefit of LESSOR.

(b) Immediately upon discovery thereof, LESSEE shall give written notice to LESSOR of any claims, actions or causes of action concerning the Premises, or any claims, actions or causes of actions that may subject LESSOR to liability, risk of loss or binding adjudication of rights.

14. Costs of Litigation. In case either party shall, without fault on its part, be made a party to any litigation commenced by the other party or against the other party (other than condemnation proceedings), the other party shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the party joined without fault on its part.

15. Insurance. At all times during the term of this Lease, LESSEE shall purchase and maintain, at LESSEE's sole expense, the following policies of insurance in amounts not less than the amounts specified below, or such other amounts as LESSOR may from time to time reasonably request, with insurance companies and on forms reasonably satisfactory to LESSOR:

(a) Commercial Property Insurance.

(i) Coverage. A policy or policies of commercial property insurance covering all buildings, structures and other improvements on the Premises, and including without limitation, all furniture, fixtures, machinery, equipment, stock and any other personal property owned and/or used in LESSEE's business, whether made or acquired at LESSEE's, LESSOR's or at another's expense, in an amount equal to their full replacement cost at time of loss, without deduction for depreciation. The insurance shall be written on an Insurance Services Office, Inc. ("ISO") Commercial Property Policy - "Special Form" Causes of Loss form as from time to time filed with the Hawaii Insurance Commissioner, or its equivalent, and at a minimum such policy shall insure against destruction or damage by fire and other perils covered under such an ISO policy, with additional coverage for risk of loss by flood, hurricane and tsunami (to the extent

such coverage is available at commercially reasonable cost), perils normally insured under a policy of boiler and machinery insurance, and such other hazards or risks which a prudent business person would insure against. The policy(ies) required under this Lease shall provide replacement cost coverage (exclusive only of excavation, foundations and footings), and shall include Building Ordinance/Law coverage (for increased costs of demolition and repair due to changes in building codes or zoning ordinances). Except with LESSOR's prior written consent, which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

(ii) Trust. In the event that proceeds for loss or damage are paid under any property insurance policy required by this Lease and unless otherwise agreed to in writing by LESSOR, all such loss payment proceeds shall be deposited with a trust company designated by LESSOR to receive all such proceeds, which trustee shall have its principal office in Honolulu and be authorized to exercise corporate trust powers in the State of Hawaii. The trustee shall have no obligation whatsoever to effect, maintain or renew such insurance nor to attend to any claim for lesser damage thereunder or the collection of any proceeds thereof nor to incur any expense therefor, and shall be responsible only for the proper custody and application as herein provided of all such proceeds that actually shall come into its possession. LESSEE shall pay all fees and expenses of such trustee for or in connection with its services.

(iii) Use of Proceeds. In every case of loss, all proceeds of such insurance (excluding the proceeds of any rental value or use and occupancy insurance of LESSEE) shall be immediately available to and be used as soon as reasonably possible by LESSEE for rebuilding, repairing or otherwise reinstating the same improvements in good and substantial manner according to the plan and elevation of the improvements so destroyed or damaged or according to such modified plan as shall have been first approved in writing by LESSOR. In the event that such insurance proceeds shall be insufficient, LESSEE shall make up any deficiency from its own funds; provided, however, that if the principal improvement on the Premises shall be destroyed at any time during the last ten (10) years of the term of this Lease (or any extension hereof), LESSEE shall have the option, exercisable within sixty (60) days after such casualty, to surrender this Lease subject to compliance with the provisions of Section 17 of Article Four and thereby forfeit all interest in such insurance proceeds and in any improvements remaining on the Premises, all of which shall thereupon be payable to and be the sole property of LESSOR.

(b) Liability Insurance.

(i) Commercial General Liability Insurance. Commercial general liability or commercial general liability and excess or umbrella liability insurance written on an "occurrence" form covering the use, occupancy and maintenance of the Premises and all operations of Lessee including: Premises Operations; Independent Contractors; Products - Completed Operations; Blanket Contractual Liability; Personal and Advertising Injury; Fire Legal Liability; Employees Named as Additional Insureds; Medical Expense; elevator collision; and incidental medical malpractice. Such insurance shall be written on an ISO Commercial General Liability Policy form or its equivalent.

(1) Limits. Limits for such coverage shall be not less than the following for the specified categories: Bodily Injury and Property Damage Combined Single Limit — \$3,000,000 per occurrence, subject to \$3,000,000 general aggregate per policy year; \$3,000,000 Products and Completed Operations aggregate per policy year; Personal and Advertising Injury — \$1,000,000 per person/organization per policy year, subject to \$3,000,000 general aggregate per policy year; Fire Legal Liability — \$250,000 per fire, subject to \$3,000,000 general aggregate per policy year; and Medical Expense — \$5,000 each injury.

(2) Deductible. Except with LESSOR's prior written approval which shall not be unreasonably withheld, the policy shall not have a deductible amount in excess of \$10,000 for any one occurrence.

(3) Application of General Aggregate. The policy(ies) of insurance shall further contain a provision that the general aggregate limit applies exclusively to the Premises and the operations conducted thereon.

(ii) Workers' Compensation and Employers' Liability Insurance. Workers' Compensation and Employers' Liability insurance as required by HRS Chapter 386 and regulations thereunder, as the same may be amended from time to time, for all employees of LESSEE.

(1) Limits for such coverage shall be not less than the statutory limits for Workers' Compensation and the following for Employers' Liability: \$1,000,000 Each Accident; \$1,000,000 Disease - Policy Limit; and \$1,000,000 Disease - Each Employee.

(2) The policy shall further contain an endorsement providing a waiver of subrogation in favor of LESSOR and its employees.

(iii) Business Auto Policy. Automobile Liability Insurance covering owned, non-owned, and hired autos including Contractual Liability, written on a Business Auto Policy form or its equivalent. Limits for such coverage shall be not less than the following: Bodily Injury -- \$1,000,000 each person and \$1,000,000 each accident; Property Damage -- \$1,000,000 each accident; and Personal Injury Protection/No-Fault -- Hawaii statutory limits.

(c) Umbrella Liability. Umbrella Liability Insurance providing excess coverage over Commercial General Liability, Employer's Liability, and Automobile Liability Insurance. The Umbrella Liability policy shall be written on an "occurrence" form with a limit of liability of not less than \$5,000,000 per policy year and a self-insured retention and/or deductible no greater than \$10,000.

(d) Builder's and Installation Risk. Builder's and installation risk insurance while the Premises or any part thereof are under construction, written on the Builder's Risk Completed Value form (nonreporting full coverage), including coverage on equipment, machinery and materials not yet installed but to become a permanent part of the Premises.

(e) General Policy Terms. All policies of insurance required to be maintained pursuant to this section covering loss or damage to any of LESSEE's property shall provide that

the insurer is required to provide LESSOR with at least thirty (30) days (or not less than ten (10) days in the case of nonpayment of premiums) prior written notice of cancellation or non-renewal of any such insurance policy. LESSEE will pay all premiums thereon when due and will from time to time deposit promptly with LESSOR current policies of such insurance or certificates thereof. All public liability and property damage policies shall be in the joint names of and for the mutual and joint benefit and protection of LESSOR, LESSEE, and LESSEE's mortgagee(s), as their respective interests may appear, and shall contain a provision providing that LESSOR, although named as an additional insured, shall not be denied any recovery under the policy(ies) for any loss occasioned to it, its servants, agents and employees by reason of the acts, omissions and/or negligence of LESSEE which recovery would be possible if LESSOR were not named as an additional insured. As often as any such policy shall expire or terminate, LESSEE shall procure and maintain renewal or additional policies in like manner and to like extent. All general liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which LESSOR may carry.

(f) Periodic Review of Insurance Coverages. LESSOR shall retain the right at any time, but not more frequently than once every three (3) years, to review the coverage, form, and amount of the insurance required by this Lease. If, in the reasonable judgment of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR in light of then prevailing practices under leases of similar properties in the State of Hawaii, LESSOR may require LESSEE to obtain insurance sufficient in coverage, form, and amount to provide such additional protection. LESSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LESSOR shall notify LESSEE in writing of changes in the insurance requirements and LESSEE shall deposit copies of acceptable insurance policies or certificates thereof with LESSOR incorporating the reasonably required changes within sixty (60) days of receipt of such notice from LESSOR.

16. Landscaping. LESSEE shall, at all times during the term of the Lease, landscape the open areas of the premises in the same or similar fashion as shown on LESSEE's landscape plan dated _____. LESSOR acknowledges and agrees that (a) LESSEE may change the landscaping from time to time without LESSOR's consent and (b) comparability, not precise compliance, with the above-referenced landscape plan is all that is required.

17. Surrender. At the end of the term or other sooner determination of all or a portion of this Lease, LESSEE will peaceably deliver up to LESSOR possession of the land hereby demised, including all buildings and other improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except for reasonable wear and tear, and in strictly clean, safe and sanitary condition; provided, however, that if LESSEE is not in default hereunder, it may then remove any trade fixtures installed by it on the Premises but shall repair promptly to LESSOR's satisfaction all damage caused by such removal; provided, further, that if LESSOR, in its sole discretion, shall determine that such improvements or portions thereof should be removed and shall give LESSEE written notice of such determination within thirty (30) days of such termination, LESSEE, at no cost to LESSOR and with as little damage to the Premises as is reasonably possible, shall remove promptly said improvements or portions thereof

in accordance with applicable law and shall leave the Premises in clean and orderly condition free of all debris.

Upon such termination or sooner determination, LESSEE shall, at LESSEE's cost and expense, provide LESSOR with evidence satisfactory to LESSOR that LESSEE has fully complied with all applicable law or orders by any governmental authority having jurisdiction therefor, including, without limitation, full compliance with any closure plan filed or required to be filed with any such governmental authority and removal from the Premises of all Hazardous Materials and other materials that may cause damage or injury to the environment or health.

If, within thirty (30) days after such termination or sooner determination of this Lease, such evidence shall not have been provided LESSOR, or if LESSOR shall have requested removal of improvements and LESSEE shall not have removed said improvements, LESSOR may effect such full compliance or removal on behalf of LESSEE. All costs incurred by LESSOR in effecting such compliance or removal shall be at LESSEE's expense and LESSEE will, within thirty (30) days from LESSEE's receipt of demand by LESSOR, reimburse LESSOR for such costs, together with interest as provided in Section 10 of Article Five of this Lease. Until such full compliance or removal is completed, either by LESSEE or LESSOR, and all costs therefor have been paid by LESSEE or reimbursed by LESSEE to LESSOR, together with interest thereon, if any, the Premises and this Lease shall not be deemed surrendered even though LESSEE has vacated the Premises, and LESSEE shall continue to incur and pay annual rent on the Premises or portion thereof being surrendered in an amount equal to twice (2X) the total of annual rent paid by LESSEE during the Lease year just preceding termination, prorated for the period of time from termination to the time surrender is completed.

LESSEE shall not be relieved of its obligations under this Lease until surrender is completed in accordance with the provisions of this section. Final inspection and release of the Premises by concerned governmental agencies, if any, and by LESSOR shall be a condition precedent to completion of surrender and termination of LESSEE's obligations hereunder. Nothing herein shall be deemed to relieve LESSEE of an obligation, such as the obligation to indemnify LESSOR, which by its specific terms survives termination.

18. Processing Fees/Documentation. LESSEE agrees to pay to LESSOR, LESSOR's standard fees for commercial tenants for LESSOR's processing of consents and assignments and providing documents required or authorized by the terms, covenants, and conditions of this Lease.

19. Hazardous Materials.

LESSEE shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or about the Premises any Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws.

LESSEE shall immediately advise LESSOR in writing of (i) any and all enforcement, clean up, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Premises,

(ii) all claims made or threatened by any third party against LESSEE or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials, (iii) LESSEE's discovery of any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject LESSEE, LESSOR or the Premises to any restrictions on ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Laws.

LESSEE shall cause any Hazardous Materials on the Premises to be (A) remediated on-site in accordance with applicable Hazardous Materials Laws, or (B) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Materials transporters to duly licensed disposal facilities for final disposal to the extent required by and in accordance with applicable Hazardous Materials Laws, and shall deliver to LESSOR copies of any hazardous waste manifest reflecting the proper disposal of such Hazardous Materials. Except in emergencies or as otherwise required by law, LESSEE shall not take any remedial or removal action in response to the presence, release or threatened release of any Hazardous Materials on or about the Premises without first giving written notice of the same to LESSOR and obtaining LESSOR's written consent thereto.

LESSEE shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials claims without first notifying LESSOR of LESSEE's intention to do so and affording LESSOR the opportunity to join and participate, as a party if LESSOR so elects, in such proceedings. Except as provided above, LESSEE shall be solely responsible for and shall indemnify, defend and hold harmless LESSOR and LESSOR's employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to LESSEE's use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials, on, under or about the Premises (except those released on the Premises prior to the commencement of this Lease, or after such commencement by LESSOR or its agents), including (A) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (B) all reasonable costs and expenses incurred by LESSOR in connection therewith, including, without limitation, reasonable attorneys' fees.

Within thirty (30) days of receipt thereof, LESSEE shall provide LESSOR with a copy of any and all environmental assessments, audits, studies and reports regarding LESSEE's past or current activities on the Premises or the environmental condition of the Premises, in each case, in LESSEE's possession or control.

The covenants of this Section 19 of Article Four, including, without limitation, the indemnification provisions, shall survive the expiration or termination of this Lease, or any termination of LESSEE's interest in the Premises.

20. Underground Storage Tank (UST). A UST is any tank, including underground piping connected to the tank, that has at least ten percent (10%) of its volume underground and is used for the storage of certain regulated substances like petroleum or certain hazardous chemical.

Prior consent and approval from LESSOR is required for the installation of any UST on the Premises, which consent and approval shall not be unreasonably withheld or delayed. All USTs are considered trade fixtures and are to be removed upon termination or expiration of the Lease by LESSEE. IF LESSEE has installed a UST, then and in such event, LESSEE shall arrange, at its sole cost and expense, for the removal of any such UST at the end of the term of this Lease and upon such removal shall arrange to be provided to LESSOR within ninety (90) days after the end of such Lease term a satisfactory UST closure report prepared by a recognized Hawaii environmental engineer and accepted by the Department of Health of the State of Hawaii. If any clean up procedures and/or remediation is necessary as a result of the installation of such UST then and in such event, LESSEE shall arrange to have all such work done, at LESSEE's sole cost and expense, by an environmental engineering company reasonably acceptable to LESSOR, in accordance with all then applicable regulations and requirements of the State of Hawaii, Department of Health.

21. Non-warranty. LESSOR does not make any warranties with respect to the condition of the Premises, and the Premises are being leased "AS IS". LESSEE acknowledges that (a) the Premises may require additional soil compaction, filling, grading and site preparation and may have expansive soils, boulders, cavities and other such soils conditions, and (b) LESSOR's surrounding lands may be subdivided, developed, improved, sold, operated and otherwise used in any lawful way and LESSOR makes no warranty or representation, express or implied, as to the subdivision, development, improvement, sale, operation and use of the LESSOR's surrounding lands by it or others. Any provisions of this Lease which permit or provide for abatement of the annual base rental in specified circumstances shall not be deemed to be warranties.

ARTICLE FIVE

IT IS HEREBY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES
AS FOLLOWS:

1. Mortgage. Upon due application and with the written consent of LESSOR, which consent shall not be unreasonably withheld or delayed, LESSEE may mortgage this Lease, or any interest therein. LESSOR covenants and agrees to promptly review any request by LESSEE for consent to a mortgage to finance any portion of the construction of the improvements or facilities to be developed and constructed on the Premises under this Lease and any permanent loan or loans replacing any such construction loans. Any mortgage consented to by LESSOR pursuant to this Section 1 of Article Five shall be deemed an "Approved Mortgage" for purposes of all other provisions of this Lease. If the mortgage or security interest is to a recognized lending institution, authorized to do business as such in either the State of Hawaii or elsewhere in the United States, the consent shall extend to foreclosure and sale of LESSEE's interest at the foreclosure to any purchaser, including the Mortgagee, without regard to whether or not the purchaser is qualified to lease, own or otherwise acquire and hold the Premises or any interest in the Lease. The interest of the Mortgagee or holder shall be freely assignable. The term "holder" shall include the Mortgagee and an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans

Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these federal agencies.

If an Approved Mortgagee of this Lease (the "Mortgagee") shall deliver to LESSOR an executed counterpart of the leasehold mortgage (the "Mortgage") with the recording information duly noted thereon as certified by a title company doing business in the State of Hawaii, together with a written notice setting forth the name and address of Mortgagee, then, until the time, if any, that the Mortgage shall be satisfied or Mortgagee shall give to LESSOR written notice that the Mortgage has been satisfied, the following provisions shall be applicable:

(a) no mutual cancellation, surrender, acceptance of surrender or modification of this Lease shall be binding upon Mortgagee or affect the lien of the Mortgage, without the prior written consent of Mortgagee.

(b) No notice, demand, election or other communication required or permitted to be given under the Lease (all of the foregoing hereinafter collectively being referred to as "notices", and each of them as a "notice") which shall be given by LESSOR to LESSEE shall be binding upon or affect Mortgagee, unless a copy of said notice shall be given to Mortgagee within the time when such notice shall be required or permitted to be given to LESSEE. In the case of an assignment of the Mortgage or change in address of Mortgagee, the assignee thereof or the Mortgagee, by notice to LESSOR, may change the address to which copies of notices are to be sent as herein provided. LESSOR shall not be bound to recognize any assignment of the Mortgage unless and until LESSOR shall be given a notice of such assignment, including a copy thereof in the form proper for recording, together with the name and address of assignee and, thereafter, until a further assignment, the assignee named in such assignment shall be deemed to be "Mortgagee" for all purposes under this Lease. If the Mortgage is held by more than one person, corporation or entity, no provision of this agreement requiring LESSOR to give a notice or copy of any notice to Mortgagee shall be binding upon LESSOR unless and until all of the holders of the Mortgage shall designate in writing one of their number to receive all notices and copies of notices and shall have given to LESSOR an original executed counterpart of the designation in form proper for recording. All notices and copies of notices to be given to Mortgagee as provided in this section shall be given in the same manner as is provided in this Lease in respect of notices to be given by LESSOR or LESSEE.

(c) Mortgagee shall have the right (but not the obligation) to perform any term, covenant, condition or agreement and to remedy any default by LESSEE under the Lease, and LESSOR shall accept such performance by Mortgagee with the same force and effect as if furnished by LESSEE; provided, however, that Mortgagee shall not thereby or hereby be subrogated to the rights of LESSOR.

(d) If LESSOR shall give a notice of default to LESSEE pursuant to the provisions of this Lease, and if such default shall not be remedied within the applicable cure period provided for in this Lease, and LESSOR shall thereby, or otherwise, become entitled to

give a notice of election to terminate the Lease, then, before giving any such notice of election to terminate the Lease, LESSOR shall give to Mortgagee not less than sixty (60) days' additional written notice of LESSEE's failure to cure the default, and shall allow Mortgagee such additional sixty (60) days within which to cure the default, provided, however, that (i) if the default can be cured by the payment of money, the additional time for Mortgagee to cure shall be limited to thirty (30) days, and provided further (ii) if the default cannot practicably be cured by Mortgagee without taking possession of the Premises, Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (through appointment of a receiver or otherwise), and, upon obtaining possession, shall promptly commence and duly prosecute to completion such action as may be necessary to cure such default. Mortgagee shall not be required to continue to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to this subsection (d), if and when such default shall be cured. Nothing herein shall preclude LESSOR from exercising any of its rights or remedies with respect to any other default by LESSEE during any period when LESSOR shall be forbearing in the termination of this Lease as above provided, but in such event Mortgagee shall have all of the rights and protections herein provided.

(e) LESSEE may delegate irrevocably to Mortgagee the authority to exercise any or all of LESSEE's rights under this Lease, but no such delegation shall be binding upon LESSOR unless and until either LESSEE or Mortgagee shall deliver to LESSOR a signed counterpart, in form proper for recording, of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case the service upon LESSOR of an executed counterpart of the Mortgage in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to Mortgagee, shall be sufficient to give LESSOR notice of such delegation. Any provision of this Lease which gives to Mortgagee the privilege of exercising a particular right of LESSEE hereunder on condition that LESSEE shall have failed to exercise such right shall not be deemed to diminish any privilege which Mortgagee may have, by virtue of a delegation of authority from LESSEE, to exercise such right without regard to whether or not LESSEE shall have failed to exercise such right.

(f) In the event of the commencement of a bankruptcy proceeding by or against LESSEE, the Mortgagee shall have the option, and LESSOR shall recognize the Mortgagee's right, within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of lease, to obtain or cause LESSEE and/or trustee in bankruptcy to obtain:

(i) An extension of the period during which the Lease may be assumed or rejected; or

(ii) An abandonment of the leasehold estate by LESSEE and/or trustee in bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) An assumption of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event of the commencement of a bankruptcy proceeding by or against LESSEE, LESSOR agrees and acknowledges for the exclusive benefit of the Mortgagee and any person or entity acquiring an interest in the Lease in or in lieu of the foreclosure of the Mortgage, that the actual or deemed rejection of the Lease under Section 365 of the Bankruptcy Code (11 United States Code Section 365) or any other law having similar effect, shall not effect a termination of the Lease or affect or impair the Mortgagee's lien thereon or rights with respect thereto, provided however, that this provision is not intended and shall not be deemed to confer any rights or benefits upon LESSEE or LESSEE's bankruptcy trustee, and upon written request of the Mortgagee delivered to LESSOR within thirty (30) days following the Mortgagee's receipt of written notice of such actual or deemed rejection of the Lease, LESSOR will, at the option of the Mortgagee, execute and deliver to the Mortgagee or its designee an instrument (in form acceptable to Mortgagee or its designee) recognizing, confirming and giving legal effect to the continued existence of the Lease, with its original validity and priority, in favor of the Mortgagee or its designee (hereinafter called the "Confirmation of Lease"), subject to the lien of the Mortgage and any lien or encumbrance prior to the lien of the Mortgage, upon and subject to the following terms and conditions:

(i) The Mortgagee shall pay or cause to be paid to LESSOR at the time of the execution and delivery of the Confirmation of Lease, any and all sums which are at the time of execution and delivery thereof due under the Lease and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, which LESSOR shall have incurred by reason of the actual or deemed rejection of the Lease and the execution and delivery of the Confirmation of Lease;

(ii) The Mortgagee or its designee shall undertake, by accepting the Confirmation of Lease, to perform all covenants and conditions of the Lease reasonably capable of performance by the Mortgagee or such other person or entity. The Mortgagee or its designee, as the case may be, may assign the Lease or may foreclose upon the Mortgage without further consent of LESSOR and the Mortgagee or its designee shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such Lease contained and on LESSEE's part thereunder to be performed and observed from and after the date of such assignment by the Mortgagee or its designee or upon foreclosure, provided that a certified copy of such assignment be provided to LESSOR; and

(iii) The Mortgagee or its designee under the Lease shall be entitled to and shall have the same right, title and interest in and to the Premises and the buildings and improvements thereon as LESSEE had under the Lease prior to its rejection and LESSOR shall use commercially reasonable efforts to obtain the cooperation of all parties in interest such that any Confirmation of Lease made pursuant to this Agreement shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises which mortgage, lien, charge or encumbrance was junior to the Lease.

2. Breach. Time is of the essence of this agreement and if LESSEE shall become bankrupt, or shall abandon the Premises, or if this Lease and the Premises shall be attached or taken by operation of law, or if any assignment is made of LESSEE's property for the benefit of creditors, or if LESSEE shall fail to observe and perform any of the material terms, covenants

and conditions contained in this Lease and on its part to be observed and performed, LESSOR shall deliver a written notice of the breach or default by service, as provided by Section 634-35, or 634-36, Hawaii Revised Statutes, or by registered mail, or certified mail to LESSEE at its last known address, and to each mortgagee or holder of record having a security interest in the Premises, making demand upon LESSEE to cure or remedy the breach or default within sixty (60) days from the date of receipt of the notice [if such default is by its nature not reasonably susceptible of being cured within such 60 day period, such 60 day period may be extended as necessary to provide LESSEE the opportunity to cure the default, provided LESSEE within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed]; provided that where the breach involves a failure to make timely rental payments pursuant to the Lease, the written notice shall include a demand upon LESSEE to cure the breach within less than sixty (60) days, but not less than five (5) business days, after receipt of the notice. Upon failure of LESSEE to cure or remedy the breach or default within the time period provided herein, or within such additional period as LESSOR may allow for good cause, but subject to the provisions of Section 171-21, Hawaii Revised Statutes, and subject also to Sections 1(d) and 1(f) of Article Five above, LESSOR, in addition to all other rights and remedies LESSOR may have under this Lease, shall have the following rights:

(a) The right to declare the term of this Lease (or any extension) ended, to re-enter the Premises and take possession thereof and to terminate all of the rights of LESSEE in and to the Premises.

(b) The right, without declaring the term of this Lease (or any extension) ended, to re-enter the Premises and to occupy the same or any portion thereof and/or to lease the whole or any portion thereof, all for and on account of LESSEE as hereinafter provided.

(c) The right, even though LESSOR may have re-let all or any portion of the Premises, at any time thereafter to elect to terminate this Lease for such previous defaults on the part of LESSEE and to terminate all of the rights of LESSEE in and to the Premises.

Pursuant to said rights of re-entry, LESSOR may, but shall not be obligated to, (i) remove all persons from the Premises using such force as may be necessary therefor, (ii) remove all personal property therefrom, including, but not limited to, LESSEE's property, and (iii) enforce any rights LESSOR may have against said personal property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of LESSEE or the owners or owner thereof. After sixty (60) days, personal property so stored shall be considered abandoned. Anything contained herein to the contrary notwithstanding, LESSOR shall not be deemed to have terminated this Lease or LESSEE's liability hereunder (whether such liability accrues before or after LESSOR exercises its rights hereunder) by any such re-entry or other action to obtain possession of the Premises, except as LESSOR may otherwise expressly provide in writing. LESSEE covenants and agrees that the service by LESSOR of any notice in unlawful detainer and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease or of any liability of LESSEE hereunder, except as LESSOR may otherwise expressly provide in writing.

3. Rights of Holder of Record of a Security Interest. In the event LESSOR seeks to forfeit the privilege, interest, or estate created by this Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach, if the same can be cured or remedied by the payment of money or, if such is not the case, by performing or undertaking in writing to perform all of the terms, covenants and conditions contained in the Lease on LESSEE's part to be performed, capable of performance by the holder, as determined by LESSOR, within the time period provided in Section 171-20, Hawaii Revised Statutes, or within any additional period allowed under Sections 1(d) and 1(f) of Article Five above, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, LESSOR may: (a) pay to the holder from any monies at its disposal the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, LESSOR shall be entitled to the conveyance of the privilege, interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to LESSOR, then terminate the outstanding privilege, interest or estate without prejudice to any other right or remedy for arrearages of rent or for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by LESSOR in instituting or prosecuting its rights or remedies under this provision and Section 171-21 of the Hawaii Revised Statutes shall not operate as a waiver of these rights or to deprive it of the remedy when it may still otherwise hope to resolve the problems created by the breach or default involved. The proceeds of any disposition under subparagraph (b) above shall be applied as follows: first, to reimburse LESSOR for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price, indebtedness or damages owing LESSOR in connection with the privilege, interest or estate terminated; third, to Mortgagee to the extent of the value received by LESSOR upon disposition which exceeds the fair market lease value of the land as previously determined by LESSOR's appraiser; and fourth, to the owner of the privilege, interest, or estate.

4. Condemnation. If at any time, during the term of this Lease, all or any portion of the Premises should be condemned, or required for public purposes by the State of Hawaii, or any county or city and county, or any other governmental agency or subdivision, then and in any such event, LESSEE and/or those claiming by, through or under LESSEE will be entitled to just compensation to the same extent and according to the same principles and rules of law as if the Premises and all improvements thereon had been condemned by the State of Hawaii under its power of eminent domain, the amount of such just compensation to be determined in the manner set forth in Section 5 of Article Two. Nothing herein contained shall be construed as preventing LESSEE from being entitled to any separate award made to LESSEE for the taking of LESSEE's personal property, or from claiming all or any portion of its award directly against the condemning authority. The foregoing rights of LESSEE shall not be exclusive of any other to which LESSEE may be entitled by law. In the event that LESSEE reasonably determines that the remainder of the Premises are rendered unusable as the result of any such condemnation

LESSEE shall have the right to surrender the Premises and terminate this Lease pursuant to Section 17 of Article Four upon the delivery of written notice to LESSOR.

5. Right to Enter. LESSOR and agents or representatives shall have the right to enter and cross any portion of the Premises other than the building for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, LESSOR shall not interfere unreasonably with LESSEE or LESSEE's use and enjoyment of the Premises.

6. Inspection by Prospective Bidders. LESSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the Premises prior to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LESSEE, and shall, if LESSEE so requires, be made in the company of LESSEE or designated agents of LESSEE; provided, further, that no such authorization shall be given more than two (2) years before the expiration or termination of this Lease.

7. Payment or Acceptance of Rent Not a Waiver. The payment or acceptance of rent shall not be deemed a waiver of any breach by LESSOR or LESSEE of any term, covenant or condition of this Lease, nor of LESSOR's right to re-entry for breach of covenant, nor of the right to declare and enforce a forfeiture for any breach, and the failure of LESSOR or LESSEE to insist upon strict performance of any term, covenant or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of such term, covenant, condition or option.

8. Extension of Time. Whenever a party is required to perform an act under this Lease, other than the payment of money, by a certain time, said time shall be deemed extended so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; volcanic eruption; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; condemnation; requisition; acts of governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such party's control.

9. Quiet Enjoyment. LESSOR covenants and agrees with LESSEE that upon payment of the rent at the times and in the manner provided and the observance and performance of these terms, covenants and conditions on the part of LESSEE to be observed and performed, LESSEE shall and may have, hold, possess and enjoy the Premises for the term of the Lease, without hindrance or interruption by LESSOR or any other person or persons by, through or under it. LESSOR shall defend the title to the Premises and the use and occupancy of the same by LESSEE against the claims of all persons, except those claiming by or through LESSEE.

10. Interest, Costs and Fees. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

In case of any default by LESSEE in the performance of the terms, covenants and conditions herein contained, LESSEE shall pay to LESSOR any and all costs incurred in connection with the default, including reasonable attorneys' fees. In the event that any indebtedness arising hereunder is placed in the hands of a collector or an attorney for collection, or suit is instituted for collection, LESSEE shall pay, in addition to the indebtedness, reasonable collector's and/or attorneys' fees, together with all costs.

11. Hawaii Law/Filing. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii. This Lease shall not be recorded although the parties agree to duly execute and file with the Bureau of Conveyances a memorandum of this Lease in substantially the form of **Exhibit "C"** attached hereto.

12. Partial Invalidity. If any term, provision, covenant or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. Notice. Except as otherwise required by Chapter 171, Hawaii Revised Statutes, any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to LESSEE:

If to LESSOR:

Department of Hawaiian Homes Land
1099 Alakea Street, 20th Floor
Honolulu, Hawaii 96813
Attention: _____
Fax: (808) 586-3923

And a copy to:

Attorney General's Office
465 South King Street, Basement
Honolulu, Hawaii 96813
Attention: George K. K. Kaeo, Jr., Esq.
Fax: (808) 587-2938

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

14. Definitions. As used herein, unless clearly repugnant to the context:

(a) “Chairman” shall mean the Chairman of the Hawaiian Homes Commission of the Department of Hawaiian Home Lands of the State of Hawaii or his/her successor.

(b) For the purpose of this Lease, the term “Hazardous Materials” as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statute, regulation or ordinance, as amended from time to time, including but not limited to the following statutes and regulations promulgated pursuant to them (“Hazardous Materials Laws”):

Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.
 (“RCRA”)
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) amended by Superfund Amendments and Reauthorization Act of 1986 (“SARA”), 42 U.S.C. 9601 et seq.
Clean Air Act, 42 U.S.C. Sections 7401 et seq.
Clean Water Act of 1977, 33 U.S.C. 1251 et seq.
Pesticide Act of 1978, 7 U.S.C. 13 et seq.
Toxic Substances Control Act (“TSCA”), 15 U.S.C. 2601 et seq.
Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.
Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.
Chapter 128D, Hawaii Revised Statutes
Chapters 342B through 342N, Hawaii Revised Statutes,

and including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls (“PCBs”), formaldehyde, and also including any substance designated by federal, state or local regulation, now or in the future, as presenting a risk to human health or the environment.

(c) “Holder of record of a security interest” is a person who is the owner or possessor of a security interest in the Premises and who has filed with the Department of Hawaiian Home Lands and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) “LESSOR” shall mean and include LESSOR herein, its successors or assigns.

(e) “LESSEE” shall mean and include LESSEE herein, its successors or permitted assigns.

(f) The “Premises” shall mean the land leased hereunder.

(g) The use of any gender shall include all genders, and if there be more than one lessee, then all words used in the singular shall extend to and include the plural.

(h) The paragraph headings throughout this Lease are for the convenience of LESSOR and LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By _____
Micah A. Kane, Chairman
Hawaiian Homes Commission

LESSOR

_____,
a _____ corporation

By _____
_____,

LESSEE

EXHIBIT “A”

LEGAL DESCRIPTION OF PREMISES

EXHIBIT “B”
SUBDIVISION MAP

EXHIBIT "C"

MEMORANDUM OF LEASE

LAND COURT	REGULAR SYSTEM
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TMK No.: _____

This document contains ____ pages

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of _____, 200____, by and between the State of Hawaii, by its **DEPARTMENT OF HAWAIIAN HOME LANDS**, whose principal place of business is 1099 Alakea Street, 20th Floor, Honolulu, Hawaii 96813, and post office address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter called "LESSOR," and _____, a _____ corporation, whose business and mailing address is _____, hereinafter called "LESSEE."

1. **TERM AND PREMISES.** For a lease term commencing on _____, and ending as of midnight on _____, upon the provisions set forth in that certain written lease of even date herewith from LESSOR to LESSEE ("Lease"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, LESSOR leases to LESSEE, and LESSEE leases from LESSOR, that certain real property ("Premises") located at _____

_____ Island of _____, Hawaii, comprising _____ acres, more or less, of Hawaiian Home Lands, more particularly described in Exhibit "A", together with all rights of ingress and egress and all other rights appurtenant to said Premises including, without limitation, the right to use the building to be constructed on the Premises for

the purposes contemplated in the Lease, all of which rights are more particularly described in the Lease.

2. **USE.** LESSEE is granted the right to use the Premises for _____

3. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum is prepared for the purpose of providing for record notice of the Lease, and in no way modifies the express and particular provisions of the Lease.

4. **FOR THE BENEFIT OF THE PREMISES.** LESSOR and LESSEE intend that the covenants, conditions and restrictions described and referred to herein shall be both personal to LESSOR and LESSEE and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON _____

APPROVED AS TO FORM: _____

Deputy Attorney General
State of Hawaii

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By _____
Micah A. Kane, Chairman
Hawaiian Homes Commission
LESSOR

_____,
a _____ corporation

By _____

LESSEE

EXHIBIT “A”

STATE OF _____)
) SS.
COUNTY OF _____)

On this _____ day of _____, 200____, before me appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that she is the _____ for _____, a _____ corporation and such person executed the foregoing instrument on behalf of said corporation as the free act and deed of such person and in the capacities shown having been authorized to execute such instrument in such capacity.

Print or Type Name _____
Notary Public, State of Hawaii
My Commission expires: _____